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Attorneys for Defendant Xavier Becerra

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ZELENY, an individual,

Plaintiff,

v.

**GAVIN NEWSOM, an individual, in his
official capacity; XAVIER BECERRA, an
individual, in his official capacity; CITY OF
MENLO PARK, a municipal corporation;
and DAVE BERTINI, in his official
capacity,**

Defendants.

3:17-cv-07357 RS (NC)

**DECLARATION OF JOHN W. KILLEEN
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT BY
CALIFORNIA ATTORNEY GENERAL
XAVIER BECERRA**

Date: February 25, 2021
Time: 1:30 p.m.
Dept: Courtroom 3, 17th Floor
Judge: The Honorable Richard G.
Seeborg
Trial Date: None set
Action Filed: 12/28/2017

1 I, John W. Killeen, declare as follows:

2 1. I am a Deputy Attorney General in the California Attorney General's Office. I
3 represent Defendant Xavier Becerra, in his official capacity as Attorney General of California
4 ("Defendant"), in the above-captioned matter. I have personal knowledge of each fact stated in
5 this declaration, and if called as a witness I could and would testify competently to them under
6 oath.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of a document produced by
8 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0070 to ZEL0075.

9 3. On March 18, 2019, counsel for Defendant City of Menlo Park deposed Plaintiff
10 Michael Zeleny. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the
11 transcript of Mr. Zeleny's deposition.

12 4. Attached hereto as Exhibit 3 is a true and correct copy of a document produced by
13 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0007.

14 5. Attached hereto as Exhibit 4 is a true and correct copy of a document produced by
15 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0001 to ZEL0003.

16 6. Attached hereto as Exhibit 5 is a true and correct copy of a document produced by
17 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0248 to ZEL0258.

18 7. On March 19, 2019, and continuing on August 7, 2020, counsel for Plaintiffs deposed
19 Defendant Chief Dave Bertini. Attached hereto as Exhibit 6 is a true and correct copy of excerpts
20 from the transcript of Chief Bertini's deposition.

21 8. Attached hereto as Exhibit 7 is a true and correct copy of a document produced by
22 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0181 to ZEL0182.

23 9. Attached hereto as Exhibit 8 is a true and correct copy of a document produced by
24 Defendant City of Menlo Park in this litigation, bates-stamped MP000234 to MP000240.

25 10. Attached hereto as Exhibit 9 is a true and correct copy of a document produced by
26 Plaintiff Michael Zeleny in this litigation, bates-stamped ZEL0167.

Exhibit 1



Michael Zeleny <larvatus@gmail.com>

Notice of Peaceful Protests in the San Francisco Bay Area

Michael Zeleny <michael@massmeans.com>

Mon, Jun 25, 2012 at 2:41 PM

To: Jennifer Tejada <jtejada@ci.sausalito.ca.us>, Greg Munks <gmunks@co.sanmateo.ca.us>, btsmith@sbcglobal.net, sheriff@sfgov.org, sfdcommunityrelations@sfgov.org, policechief@menlopark.org, rdoyle@marinsheriff.org, police@losgatosca.gov, pd@cityofpaloalto.org, bcole@santacclaraca.gov, knguyen@santacclaraca.gov
Cc: "David W. Affeld" <dwa@agzlaw.com>, "Michael D. Pinnisi" <mpinnisi@pinnisianderson.com>, "Hawk, Robert B." <robert.hawk@hoganlovells.com>, Arno Penzias <apenzias@nea.com>, Brooke Seawell <bseawell@nea.com>, Subrah Iyar <Subrah.Iyar@webex.com>, Forest Baskett <fbaskett@nea.com>, Scott Sandell <ssandell@nea.com>, Sigrid Van Bladel <svanbladel@nea.com>, Peter Sonsini <psonsini@nea.com>, Dick Kramlich <dkramlich@nea.com>, Robert Garland <rgarland@nea.com>, Louis Citron <lcitron@nea.com>, Jake Nunn <jnunn@nea.com>, Dan Primack <danielprimack@gmail.com>

Dear Bay Area law enforcement personnel,

Over the following year, I shall reside and appear in your jurisdictions, exercising my fundamental rights under the First and Second Amendments to the Constitution of the United States in the course of ongoing peaceful public protests, as documented at <http://www.subrah.com/> and <http://larvatus.livejournal.com/tag/webex>. The attached images and the article "[Man with semi-automatic weapon protests on Sand Hill](#)", published in a local newspaper, should give you an adequate idea concerning the parameters of my performances.

I conduct my protests in response to independently witnessed and officially documented death threats made against me and my family in order to deter us from pursuing claims recorded in a lawsuit subsequently filed in California Superior Court, County of Santa Clara as case No. 1-02-CV-809286, *Zeleny v. Zhu and WebEx*, in the names and on the behalves of Min Zhu and WebEx Communications, Inc. The evidence of these threats and their gravity sufficed for Judge Adajian of Los Angeles Superior Court to acquit me on 11 April 2003 of weapons carry charges on the grounds of necessity, in a bench trial of case No. 2CR11665. In accounting for his acquittal, he ruled:

He wouldn't get a gun permit. He wouldn't get a gun permit. We just don't issue those in L.A. unless you're a movie star or somebody who shouldn't have one. But they manage to get one. Attorney's [sic.] should have one. I couldn't get one when I was an attorney. I know when I became a judge, a responsible person, I was able to get one. Not as an attorney.

I think he had a good-faith belief in the threat. He did go to the police. He did do the right thing.

Ten months after this decision, my father Isaak Zelyony, plaintiff in a related lawsuit No. 1-02-CV-810705, styled *Zelyony v. Zhu*, suffered fatal injuries in an apartment fire that appeared to start at two locations at once. My father was important to me. I am seeking amends for unlawful threats of violence that were followed by his violent death under suspicious circumstances. I am protesting the ongoing institutional and individual support of a violent sexual deviant, who represents a grave personal threat to me and my family.

As law enforcement officers, you are well placed to assess my situation. For starters, you might consult the 1988 sealed police report of childhood sexual abuse made by Min Zhu's then 14 year-old daughter Erin. On numerous occasions Erin recounted Min's prior use of the terms that failed to dissuade me from pursuing my claim against him and his company, to persuade her to yield to his sexual advances. Her subsequent complaints of her molestation by Min Zhu can be found on newsgroup alt.sexual.abuse.recovery via [Google Groups search for the terms "Erin Zhu sexual abuse"](#). Additionally, they can be found along with her draft complaint against Min Zhu for childhood sexual abuse, [her email correspondence with Blixa Bargeld](#) to that effect, and various declarations by third parties attesting to the same facts, as matters of public record in Santa Clara Superior Court case 1-02-CV-809286, *Zeleny v. Zhu & WebEx*. Erin Zhu has authenticated the accounts of her rape by her father that she had authored and relayed or publicized, in sworn depositions in that case. Moreover, in a sworn deposition taken by John Walton on 3 November 2003, in *Zelyony v. Zhu*, Santa Clara Superior Court Case Number CV-810705, she confirmed under oath having settled her childhood sexual abuse claim against her father Min Zhu for \$300,000, paying her lawyer David Affeld a contingency fee of 2.5%. She admitted having participated in the preparation of the draft complaint, which included a graphic description of her rape by Min Zhu. She acknowledged that after she settled her claim against them, her parents made her the beneficiary of a trust; and although she denied linking it to the settlement, she later settled a claim by her lawyer, who sued her for a contingency fee portion of the trust. While denying on that occasion that her childhood sexual abuse by her father involved "penetration", Erin Zhu confirmed under oath having told her lawyer when they prepared the draft complaint that it did involve penetration, and never having told him otherwise; and she further confirmed under oath that this sexual abuse occurred between 1 and 20 times. I urge you to consult the relevant parts of the transcript of Erin Zhu's referenced deposition, as entered in evidence and permanently consigned to the public record in *NEA v. Zeleny*, San Mateo Superior Court Case No. CIV499465, in the context of California Penal Code Section

ZEL 0070

263 providing: "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime."

My revelations of these facts failed to diminish the support of Min Zhu by the Menlo Park venture capital firm New Enterprise Associates (NEA). By NEA's accounts, its business relationship with Min Zhu began in 1999 when it invested in the company that he founded, WebEx Communications, Inc. According to SEC filings, NEA's General Partner Scott Sandell was on the Board of Directors of WebEx until February 2002. In his sworn declaration Sandell testified that "Min Zhu was a consultant at NEA, with the title Venture Partner, from March 17 2004 through March 2008." NEA has acknowledged that in 2004 I emailed them about Erin Zhu's claims concerning her childhood sexual abuse by her father Min Zhu. In my communications I pointed out that Erin verified under oath having made these claims between 1991 and 2001 in conversation with her friends, associates, and employees; in public Usenet postings and letters to her husband Blix Bargeld; and in statements to her lawyer David Affeld in connection with the claim for childhood sexual abuse that he presented to her parents and settled on her behalf. My notices went unanswered and had no effect on NEA's support of Min Zhu and his position at WebEx. Min Zhu resigned from WebEx and fled the United States to China only after I exposed him as a child rapist at the WebEx User Conference in San Francisco, on 2 May 2005. Yet in September of the same year, NEA funded Min Zhu's next venture in China, in full knowledge of the foregoing events. Witness [this pointed observation](#) published by China Venture News on 23 September 2005: "What's missing in the Private Equity Online article or any NEA release is any mention of the previous controversy surrounding NEA's venture partner, Min Zhu, who joined NEA in 2004, after his forced resignation as WebEx President and Director." Another side of Min Zhu's character is captured in the 2007 report of a joint investigation of WebEx by FBI and NSA, which found it illicitly transferring the records of its customers' confidential communications to China. To connect the dots, NEA's knowing sponsorship of a duplicitous child rapist has been an open secret in the venture capital community for over seven years. This is especially noteworthy in an industry, whose [foundations can be shaken](#) by a female partner's displeasure at [receiving a copy of Leonard Cohen's *The Book of Longing* from her male colleague](#).

[According to Min Zhu](#), as of 2008, NEA continued to invest money in his company Cybernaut. I have no reason to doubt that their business relationship has continued to this day. By all accounts, Min Zhu has established himself as an excellent profit earner, inspiring investments from numerous profit-seeking institutions and individuals undeterred by scruples about his character. In bringing to light its defects, I look forward to finding out, how far the turpitude of Silicon Valley capital is matched by its shamelessness.

Please be assured that I am sensitive to your concerns for public safety. Accordingly, in the course of my Constitutionally protected activities, I pledge to abstain from any unlawful actions, including, without limitation, the following:

- loading any firearms in the absence of a reasonable fear for life or limb;
- deploying or firing any deadly weapons or firearms in the absence of a clear and present danger to life or limb;
- making any threats of unlawful violence, including, but not limited to, drawing or exhibiting any deadly weapons or firearms in the presence of another person, in a rude, angry, or threatening manner;
- stalking, accosting, or harassing any individual, including, but not limited to, making harassing telephone calls to any individual or institution, or sending harassing correspondence to any individual or institution by any means;
- making any statement or engaging in a course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose;
- capturing visual images or audio recordings of any individual who has a reasonable expectation of privacy, or otherwise attempting to frustrate such an expectation.

I am pleased to point out that my prior events in San Diego, Milpitas, Menlo Park, and Santa Clara were unmarked by any disturbances. I hope that the same will be the case on this occasion of scaling up my activities within the bounds of legitimacy sanctioned by the authorities of the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. Owing to substantial gains in my quest for legitimate remedies, my protests shall include topical artistic performances by bagpipers, clowns, rappers, and a brass band. I shall employ portable generators, high-intensity floodlights, and night vision devices to discover the identities and whereabouts of other friends and supporters of Min Zhu. It is my position that the mounting of these performances and the use of these instruments are protected under the First Amendment, and therefore are not subject to local permit requirements. However, as an accommodation provided in the spirit of courtesy, I shall consider reasonable requests for placing time, place, and manner constraints on my performances on a case-by-case basis. Lastly, I continue to claim the right protected by the First Amendment, to hold press conferences at the sites of our protests and to film all passerby there being questioned as to their opinion of their subject matter. I hope to forestall dangerous misunderstandings and futile litigation bound to be costly and disappointing to your taxpayers by giving you this advance notice of our plan.

My protests will take place, without limitation, at the public grounds adjacent to the following institutions and residences:

1. New Enterprise Associates (NEA), [2855 Sand Hill Road, Menlo Park, CA 94025](#);
2. Cisco/WebEx, [3979 Freedom Circle, Santa Clara, CA 95054](#);
3. Silk Road Software & Services, Inc. (SRS2), [One Market Street, San Francisco, CA 94105](#);
4. Subrah and Rupar Iyar, [15292 Kennedy Rd, Unit A, Los Gatos, CA 95032](#);

ZEL 0071

5. Scott Sandell, 120 Deer Meadow Ln, Portola Valley, CA 94028;
6. Forest Baskett, 24 Alexander Ave, Sausalito, CA 94965;
7. Robert J. Garland, 636 Melville Ave, Palo Alto, CA 94301;
8. C. Richard Kramlich, 3699 Washington St, San Francisco, CA 94118;
9. Jake R. Nunn, 2120 Ashton Ave, Menlo Park, CA 94025;
10. Arno Allan Penzias, 19 Calle Del Mar, Stinson Beach, CA 94970;
11. Brooke A. Seawell, 1155 Trinity Dr, Menlo Park, CA 94025;
12. Peter Sonsini, 350 Olive St, Menlo Park, CA 94025; and
13. Sigrid Van Bladel, 1338 Masonic Ave, San Francisco, CA 94117.

This list will be extended and updated in future online postings and email communications. My protests will continue until I receive full satisfaction for Min Zhu's offenses against me and my family. All concerned parties may address their communications to my lawyers Michael D. Pinnisi <mpinnisi@pinnisianderson.com>, Pinnisi & Anderson, 410 East Upland Road, Ithaca, NY 14850, phone: (607) 257-8000, and David W. Affeld <dwa@agzlaw.com>, Affeld Grivakes Zucker LLP, 12400 Wilshire Boulevard, Suite 1180, Los Angeles CA 90025, phone: (310) 979-8700, fax: (310) 979-8701. I may be reached at the number listed below.

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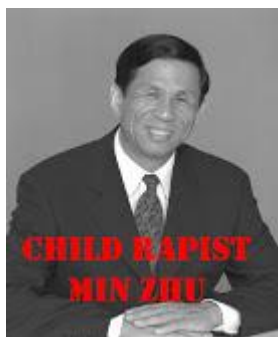
Michael@massmeans.com ---- <http://larvatus.livejournal.com/> ---- <http://www.subrah.com>
Zeleny@post.harvard.edu | 7576 Willow Glen Rd, Los Angeles, CA 90046 | 213.290.4699

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

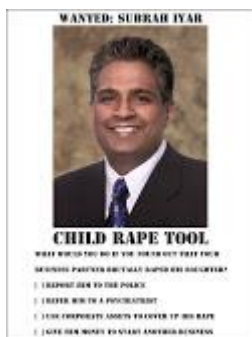
7 attachments



protest.jpg
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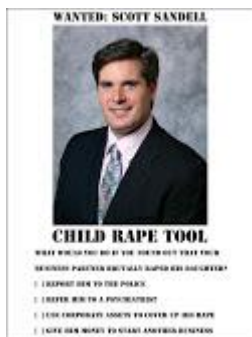


child_rapist.jpg
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TOOL1.jpg
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NEA Banner.JPG
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NEA 1.jpg
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webex 1.jpg
216K

WANTED: MIN ZHU



CHILD RAPIST, TERRORIST, THIEF

In the summer of 1988, Min Zhu threatened to kill his fourteen year old daughter Erin, unless she gave in to his sexual advances. Min continued to rape Erin every night until the school year began. He did not want his sexual needs to interfere with his daughter's studies. The thoughtful patriarch henceforth confined his child abuse to frequent beatings.

Erin Zhu has been telling this story since 1988 to friends and strangers, physicians and programmers, lawyers and policemen. Her serial rape accusations against her father are convincing. The evidence that supports them is compelling. In 1991, Erin publicized her story on the Usenet newsgroup alt.sexual.abuse.recovery. It remains accessible via Google search. A record of her subsequent complaints can be found in Santa Clara Superior Court case number CV809286, filed by Michael Zeleny in December of 2001 against the Zhus and WebEx for breach of contract.

Erin Zhu formed a business partnership with Michael Zeleny. Their partnership lasted from January of 1995 to January 2000. It performed many jobs commissioned by Min Zhu and his company, WebEx Communications, Inc. In 1999, Erin and Michael entered into a joint venture with WebEx. In January of 2000, WebEx reneged on their agreement.

In January of 2000, Erin Zhu made a claim for childhood sexual abuse against Min Zhu. Shortly thereafter, Min paid his daughter \$300,000 in blood money. According to Erin, Min also promised to give her 500,000 shares of WebEx stock in order to settle her claim. Min meant this transfer to be secret so as to cheat Erin's lawyer David Affeld out of his 2.5% contingency fee for representing her rape claim against him. Affeld had to sue the Zhus for his fees in Santa Clara Superior Court case number CV817300.

In January of 2001, while Min Zhu was completing his rape payoff, WebEx delivered 5,000 shares of its stock to Erin Zhu. At that time, WebEx owed 5,000 shares of its stock to Zeleny's company. Zeleny attempted to recover this asset from WebEx. In response, he received anonymous death threats in the names of WebEx and Min Zhu. These threats recapitulated Min Zhu's intimidation of his daughter into yielding to his sexual advances. Zeleny's father Isaak and Affeld and his wife overheard these threats on two occasions. Min's threats ceased as soon as Zeleny sued WebEx and the Zhus. Zeleny's father, who supported Erin Zhu financially in her claim against Min, filed a related lawsuit against her in Santa Clara Superior Court case number CV810705.

On 11 February 2004, Zeleny's father suffered massive burns in an apartment fire of unknown origin. He never recovered consciousness. Isaak died of his injuries on 1 March 2004. After his father's death, Michael Zeleny went public with this story.

On 25 October 2004, the Zhus settled Zeleny's business lawsuit. A month later, they settled Affeld's lawsuit by paying his fee. Meanwhile, WebEx sued Zeleny in connection with his publication of this story. In its rulings the courts ordered WebEx to pay Zeleny's attorney's fees twice in a row, imposing sanctions for frivolous claims. Nevertheless, WebEx persisted with its defamation lawsuit against Zeleny in Los Angeles Superior Court case number BC324927.

On 2 May 2005 Zeleny protested against the coverup of Min Zhu's rape of his daughter during the WebEx Experience in San Francisco. The next day WebEx cancelled its conference. It never held another user conference since. On 13 May 2005, after failing to get a restraining order against future protests by Zeleny, WebEx announced Min Zhu's sudden "retirement" and his relocation to China. On 23 December 2005, following further public protests by Zeleny, WebEx dropped its bad faith lawsuit against him.

Numerous colleagues of Min Zhu contacted Zeleny since he started telling this story. They spoke of the times Min terrorized and assaulted his family and employees. They spoke of Min's illegal exports of U.S. technology to China. They spoke of Min putting his mistress on WebEx's payroll. They spoke of Min's theft of his customers' confidential information. They never doubted Min Zhu's limitless capacity to break the law in the furtherance of his will.

Min Zhu tucked tail and fled the U.S. after being exposed as a child rapist. His reputation preceded him. Wikipedia and Chinese internet boards echo this account. Observe carefully how Min Zhu responds to these allegations. Think twice before entrusting your business to the fool who expects a grown man to cave in as if he were daddy's little girl. Think twice before working with the psychopath who responds to business disputes with death threats.

Child rape is a loathsome crime, all the more so when it violates the bond of trust between parent and child. In his proper setting, the prison lingo identifies a child molester as a *nonce*.

Don't work for the nonce.

— Michael Zeleny@post.harvard.edu — 7576 Willow Glen Rd, L.A., CA 90046 — 323.363.1860 — <http://larvatus.livejournal.com/tag/webex> — 6 October 2007 — I will gladly answer all your questions. See for yourself if Min Zhu does likewise.

Exhibit 2

CERTIFIED COPY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual,

Plaintiff,

vs.

No. 17-cv-07357-RS

EDMUND G. BROWN, JR., an
individual, in his official
capacity, et al.,

Defendants.

DEPOSITION OF MICHAEL ZELENY

Monday, March 18, 2019

1100 Alma Street, Suite 210

Menlo Park, California

MADELEINE M. FREDA, INC.
Certified Shorthand Reporters

Reported by:

Judy Brennan

CSR No. 5138

Our File No. 18464

2000 Broadway

P.O. Box 3119

Redwood City, CA 94064

(650) 365-6152

I N D E X

Examinations

Page

MR. MASTER

7

AFTERNOON SESSION

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E X H I B I T S

	No.	Description	Page
3	1	2-page 10-26-16 email from larvatus@gmail.com to Bruce Goitia (MP000002-000003)	40
5	2	2-page 7-10-15 email from Michael Zeleny to William McClure, Scott Sandell, Matt Milde and Police Chief; 5-page attachment (MP000234-000240)	95
7	3	1-page photograph of Browning M1919A4	95
8	4	4-page still depiction of animation taken off LiveJournal	95
10	5	5-page email chain, the top one from Michael Zeleny to William McClure, dated 7-28-15 (MP000290-294); 1-page photograph	125
12	6	2-page 9-21-15 letter to Michael Zeleny from William L. McClure; 2-page attachment (MP000352-000355)	129
14	7	5-page email chain, the top one from Matt Milde to Cherise Brandell and Robert Jonsen dated 4-15-16; 12-page attachment (MP000435-000439, 000439A, 000440-000450)	131
16	8	3-page 5-4-16 letter to Michael Zeleny from William L. McClure (MP000463-000465)	140
18	9	2-page email chain, the top one from Michael Zeleny to Mr. McClure dated 5-27-16 (MP004890-004891)	141
20	10	1-page email chain, the top one from Matt Milde to Michael Zeleny, William McClure, Robin Riggins and Cherise Brandell dated 6-16-16; 3-page attachment (MP000473-000476)	144
23	11	2-page email chain, the top one from Cherise Brandell to Michael Zeleny dated 6-24-16 (MP000477-000478)	147

E X H I B I T S (Cont'd)

1			
2	12	2-page 6-24-16 letter to Michael Zeleny from Cherise Brandell (MP000479-000480)	147
3			
4	13	1-page email chain, the top one from Michael Zeleny to Cherise Brandell dated 7-1-16 (MP000481)	149
5			
6	14	1-page 7-12-16 letter to Michael Zeleny from Matt Milde on behalf of Cherise Brandell (MP000486)	149
7			
8	15	1-page email chain, the top one from Michael Zeleny to Matt Milde dated 7-13-16; 4-page attachment (MP004898-004902)	151
9			
10	16	1-page photograph of Entertainment Firearms Permit issued to Michael Zeleny 7-13-16; 2-page attachment (MP000946-000948)	155
11			
12	17	1-page email from Nicole Casados to David Bertini dated 8-22-17; 117-page attachment (MP000947-001064)	161
13			
14	18	1-page 9-5-17 email from Jelena Harada to Michael Zeleny; 2-page attachment (MP001218-001220)	174
15			
16	19	2-page email chain, the top one from Michael Zeleny to Jelena Harada dated 9-7-17 (MP001221-001222)	175
17			
18	20	3-page email chain, the top one from Ivan Toews to Michael Zeleny dated 9-28-17; 5-page attachment (MP001231-001238)	176
19			
20	21	5-page email chain, the top one from Michael Zeleny to Ivan Toews dated 10-6-17; 3-page attachment (MP001242-001249)	177
21			
22	22	1-page email chain, the top one from Michael Zeleny to Ivan Toews, Jelena Harada, William McClure, David Bertini, Alex McIntyre, Nicolas Flegel, Subrah Iyar, Scott Sandell dated 11-3-17 (MP001268)	185
23			
24			
25			

E X H I B I T S (Cont'd)

- 1
- 2 23 5-page email chain, the top one from Ivan 190
Toews to Michael Zeleny, Jelena Harada,
3 William McClure, David Bertini, Alex
4 McIntyre, Nicolas Flegel, Subrah Iyar,
Scott Sandell dated 11-6-17
(MP001279-001283)
- 5
- 6 24 9-page email chain, the top one from 190
Michael Zeleny to Ivan Toews dated
7 11-9-17; 2-page attachment
(MP001290-001300)
- 8
- 9 25 11-page email chain, the top one from 190
Nicolas Flegel to Michael Zeleny and Ivan
Toews dated 11-22-17 (MP001331-001341)
- 10
- 11 26 12-page email chain, the top one from 190
Michael Zeleny to Nicolas Flegel dated
12-21-17 (MP001415-001426)
- 12
- 13 27 10-page Defendant City of Menlo Park's 190
Special Interrogatories to Plaintiff (Set
14 One); 16-page Plaintiff Michael Zeleny's
Responses to Defendant City of Menlo
15 Park's Special Interrogatories (Set One);
2-page Proof of Service
- 16
- 17 28 9-page Defendant Dave Bertini's Special 190
Interrogatories to Plaintiff (Set One);
12-page Plaintiff Michael Zeleny's
18 Responses to Defendant Dave Bertini's
Special Interrogatories (Set One); 2-page
Proof of Service

19

20 ---oOo---

21

22

23

24

25

A P P E A R A N C E S

For the Plaintiff: AFFELD GRIVAKES LLP
BY: DAMION ROBINSON, Esquire
2049 Century Park East, Suite 2460
Los Angeles, California 90067
(310) 979-8700
dr@agzlaw.com

For the Defendants City of Menlo Park and David Bertini:

HOWARD ROME MARTIN & RIDLEY, LLP
BY: TODD H. MASTER, Esquire
1900 O'Farrell Street, Suite 280
San Mateo, California 94403
(650) 365-7715
tmaster@hrmrlaw.com

BE IT REMEMBERED that pursuant to Notice of
Taking Deposition, and on Monday, March 18, 2019,
commencing at the hour of 10:11 a.m., at 1100 Alma
Street, Suite 210, Menlo Park, California, before me,
JUDY BRENNAN, a Certified Shorthand Reporter duly
licensed by the State of California, there personally
appeared

MICHAEL ZELENY,

called as a witness by the Defendants herein, who, being
by me first duly sworn, was examined and interrogated as
is hereinafter set forth.

1 MICHAEL ZELENY,
2 being first duly sworn by the Certified Shorthand
3 Reporter to tell the truth, the whole truth and nothing
4 but the truth, testified as follows:

5
6 EXAMINATION BY MR. MASTER

7 MR. MASTER: Q. Good morning.

8 A. Good morning.

9 Q. Would you please state your full name for the
10 record.

11 A. My name is Michael Zeleny. That's Z-e-l-e-n-y.

12 Q. And you pronounce it Zeleny?

13 A. Yeah. But you're free to modify.

14 Q. What's your date of birth?

15 A. February 26, 1958.

16 Q. Have you ever been deposed before?

17 A. Yes, several times.

18 Q. When was the last time?

19 A. I think 2012. No, maybe 2010. Sorry.

20 Q. Okay. And in 2010 what was the general
21 substance of that deposition?

22 A. It was a lawsuit that NEA filed against me for
23 trespass. NEA, New Enterprise Associates.

24 Q. And you were being deposed in your capacity as
25 a party in that case?

1 A. Yeah.

2 Q. And how many other times have you been deposed
3 prior to that one?

4 A. It would have been in 2002. At least once. I
5 think that's about it.

6 Q. So you recall being deposed at least two
7 times --

8 A. At least two times, yes.

9 Q. -- prior to today?

10 A. Yes.

11 Q. And in 2002 what was the general nature of that
12 deposition?

13 A. It was a business dispute with the Zhus and
14 WebEx.

15 Q. Is that Min Zhu?

16 A. Yeah. Min and Erin.

17 Q. Did you have some business relationship with
18 Mr. Zhu and WebEx?

19 A. I had a business relationship with WebEx, not
20 with Min.

21 Q. Generally what was your business relationship
22 with WebEx?

23 A. We were supposed to be a partner with them
24 using their technology in a different market.

25 Q. When you say "we," who do you mean?

1 A. Erin and I had a company.

2 Q. And that's Erin --

3 A. Erin Zhu, Z-h-u.

4 Q. What was the name of your company with Erin?

5 A. Live Share.

6 Q. I'm sorry?

7 A. Live Share.

8 Q. Life Share?

9 A. Live, L-i-v-e, Share.

10 Q. And what was the general nature of that
11 company?

12 A. Well, we did a lot of things related to the
13 first wave of internet commercialization. In this
14 particular instance we would have done consumer level
15 marketing for the WebEx product and service.

16 Q. Let's back up since it has been --

17 A. Twenty years.

18 Q. Well, it's been almost 20 years since that
19 deposition and almost nine years since the other
20 deposition with NEA.

21 We've met prior to today --

22 A. Yes.

23 Q. -- but my name is Todd Master. I'm an attorney
24 that's been retained by the City of Menlo Park and Chief
25 David Bertini to represent them in a lawsuit filed by

1 A. Starting with my lawsuit against the Zhus and
2 WebEx, then proceeding with the WebEx lawsuit against me
3 for defamation that they dropped. Then there was a
4 lawsuit by NEA against me for trespass. I think that
5 about covers it.

6 Q. Okay. I'd like to kind of touch on each of
7 those separately, if I can.

8 A. M-hm.

9 Q. The first one is your lawsuit against Mr. Zhu
10 and WebEx.

11 A. Yes.

12 Q. When was that lawsuit filed?

13 A. Around the end of 1999.

14 Q. And I'm presuming you were a plaintiff in that
15 lawsuit?

16 A. Yes.

17 Q. Where was that lawsuit venued?

18 A. We started in Los Angeles and the venue was
19 properly moved to the Bay Area.

20 Q. Do you recall which court in the Bay Area?

21 A. I am not sure. You'd have to look it up. I do
22 have records that I can supply to you.

23 Q. Okay. And what was the purpose of your lawsuit
24 against Mr. Zhu and WebEx?

25 A. There was a breach of contract alleged and

1 various torts related to it.

2 Q. And I'm assuming that lawsuit resolved,
3 correct?

4 A. It resolved in part. I reached a settlement
5 with my former partner, Erin Zhu. I dropped the claims
6 against, or I didn't do anything about the claims
7 against the Zhus and WebEx, the rest of the Zhus and
8 WebEx.

9 Q. So your lawsuit was against Mr. Zhu and Erin
10 Zhu?

11 A. Correct.

12 Q. And WebEx?

13 A. And WebEx.

14 Q. Okay. Was the City of Menlo Park in any way
15 involved in that lawsuit?

16 A. Not at all.

17 Q. Now, let's talk about there was a -- you
18 mentioned a WebEx lawsuit against yourself for
19 defamation?

20 A. That's right.

21 Q. And where was that lawsuit -- let me ask you
22 this. When was that lawsuit filed approximately?

23 A. It would have been in the second half of 2004.
24 That's my best estimate.

25 Q. Okay. Where was that lawsuit venued, if you

1 or -- no, probably 2006.

2 Q. Okay. The first time you protested in the City
3 of Menlo Park?

4 A. I think that was in 2006, yes.

5 Q. Okay. And when you protested in the City of
6 Menlo Park in 2006, where was that protest, the physical
7 location or an address if you have it?

8 A. I don't recall, unfortunately. I can tell you
9 the occasion and you can look it up.

10 Q. Okay.

11 A. It was -- the first protest that I conducted in
12 public was in 2005. It was at WebEx User Conference in
13 San Francisco. And as a result of my protest, Min Zhu
14 had to leave WebEx and the United States.

15 In 2006, if memory serves, he came back briefly
16 to appear in Menlo Park and then at Stanford University.
17 And I was present at both occasions.

18 Q. Okay. And was that a multiple-day protest or a
19 single-day protest?

20 A. I think it was two days altogether.

21 Q. One day in Menlo Park, one day at --

22 A. Stanford.

23 Q. -- Stanford?

24 A. Yes.

25 Q. Okay. And did you have any direct contact with

1 I received in 2008, and there is a police report in
2 Hollywood that you may consult. I'll be able to give
3 you the particulars.

4 Q. Have you received any death threats since the
5 2008 time period?

6 A. No.

7 Q. My question, once again referring back to
8 Exhibit 1, is it indicates that, additionally, owing to
9 death threats you had received and this incident that
10 occurred in San Francisco, that you intend to bring with
11 you exposed unloaded firearms accompanied by loaded
12 magazines and speedloaders. Is that correct?

13 A. Yes.

14 Q. Okay. And the purpose of bringing the firearms
15 and the loaded magazines and speedloaders, is that in
16 terms of self-defense in that particular instance?

17 A. Two reasons. Going back to 2005, I conducted
18 my protest on May 2nd and May 3rd, the next day. The
19 conference was supposed to continue. WebEx, however,
20 canceled it, and in their official notice to the
21 attendees they said that they were canceling it because
22 a protester was found to have had firearms. That made
23 me understand that the mere presence of a firearm makes
24 my message much more effective. And that was one of the
25 inspirations.

1 Another one was, of course, self-protection.

2 Q. So in your mind, it served the two purposes.
3 Self-protection and scaring the people you're protesting
4 or just -- what do you mean by that?

5 A. I object to the term "scaring." I never
6 brandished a firearm in my life unless I was being
7 assaulted, which hasn't happened in the course of any of
8 these protests. I do not intend to produce fear in
9 any -- anybody observing my protest.

10 I do, however, want to attract their attention.
11 And experience has taught me that nothing attracts
12 attention as much as a gun displayed publicly.

13 Q. Can you understand -- asking you to kind of
14 step back and look back and look upon what you do, do
15 you have an understanding as to why people might be
16 fearful to see someone either protesting in
17 San Francisco or in Menlo Park or Los Angeles with
18 firearms on them? Do you understand how people could be
19 fearful of seeing something like that?

20 A. Yes, I do.

21 MR. ROBINSON: Object that it calls for
22 speculation.

23 You can answer.

24 THE WITNESS: I did answer. Yes, I understand
25 that.

1 MR. MASTER: Q. Okay. And is there anything
2 that you do or you try to do when you have arrived --
3 and we haven't gone through all the episodes yet where
4 you protested with the handguns aside from the 2005
5 protest, which you didn't have on you -- did you do
6 anything to kind of respond to that fear that people
7 might have with your guns? Anything you tried to do to
8 allay that fear and focus more on using them to just
9 garner attention to your message?

10 Do you understand my question?

11 A. I think I do. And to the extent that I
12 understand it, first and foremost, I always kept the gun
13 pointed in a safe direction, generally toward the ground
14 next to my foot.

15 Secondly, if somebody addresses me and voices
16 that sort of concern, which has happened in the past, I
17 try to explained my situation to them. And I stress
18 that under no circumstances will I initiate any kind of
19 violence with or without firearms.

20 Q. Once again referring to Exhibit 1, did you, in
21 fact, conduct a protest after sending this October 26,
22 2009 email in front of NEA?

23 A. Yes, I did.

24 Q. And did you bring those unloaded firearms
25 accompanied by loaded magazines and speedloaders?

1 A. Yes.

2 Q. And when you say loaded magazines and
3 speedloaders, I'm not a gun person. You're the expert
4 here. That means, in my mind, with live ammunition.

5 A. Yes.

6 Q. Okay. And that would be live ammunition in the
7 magazines, which is something you would put into a gun,
8 correct?

9 A. Yes. But it's not inserted in the gun. That's
10 what makes the gun unloaded.

11 Q. And then speedloaders, what does that refer to?

12 A. It's a device for loading a revolver that holds
13 six or more rounds together for rapid insertion. It's a
14 revolver cylinder.

15 Q. And so the purpose of carrying the loaded
16 magazines and speedloaders is for self-defense?

17 A. In part, yes. In another part, it also makes
18 the display much more authentic.

19 Q. And how does it make it more authentic having
20 live ammunition with you than simply just having an
21 unloaded gun with you? Is there something in your mind
22 that's differentiated between those two?

23 A. A gun without ammunition is useless. And if I
24 ever am called upon to use a gun in self-defense, I
25 would have to have ammunition accessible to me.

1 Q. So, then, the purpose of having the loaded
2 magazines and speedloaders was primarily in case you had
3 to use a gun, you didn't want to have just unloaded guns
4 with you, correct?

5 MR. ROBINSON: Objection. Asked and answered.
6 Misstates his prior testimony.

7 You can answer.

8 THE WITNESS: Yes. And that also comported
9 with at the time the most recent ruling in an appellate
10 court that pertained to the legality of carrying a
11 firearm in California.

12 MR. MASTER: Q. And which case is that?

13 A. I don't have it right here. I can send you the
14 information afterwards.

15 Q. Okay. When did you last conduct a protest in
16 the City of Menlo Park?

17 A. 2012.

18 Q. And that would be about June?

19 A. Yes.

20 Q. So between the 2006-ish time period and
21 June 2012, were all those protests concerning the same
22 general subject matter? And what I mean by that is
23 Mr. Zhu and the allegations against him as related to
24 Erin Zhu.

25 A. That is correct, yes.

1 Q. Okay. So between the 2006 time period when you
2 first protested in Menlo Park and until June of 2012 how
3 many times would you say that you protested against NEA
4 within the City of Menlo Park?

5 A. If by times you mean an appearance on a
6 particular day --

7 Q. Yes.

8 A. -- at least several dozen. I can't give you a
9 better estimate, I'm afraid.

10 Q. So several dozen. Are we between 25 and 50?

11 A. Something like that, yes.

12 Q. Something like that, okay.

13 During any of those -- strike that.

14 With the exception of the 2006 appearance
15 where, as you sit here today, you don't recall
16 specifically where that occurred, did all the other
17 protests against NEA either occur directly in front of
18 the NEA building within the complex or on Sand Hill Road
19 in front of the main entrance of that complex?

20 A. That is correct.

21 Q. Because I understand as a result of the NEA
22 lawsuit against you for trespassing, you were moved
23 outside of that complex onto the public right-of-way on
24 Sand Hill Road. Is that correct?

25 A. Yeah, that's right.

1 Q. And after that settlement was made between you
2 and NEA, you resumed protests on the public sidewalk in
3 front of NEA, that entrance there?

4 A. That is correct.

5 Q. Okay. So since your 2008 protest where you
6 walked between the parking lot and the entrance to the
7 NEA building, have you always had on you or in your
8 possession firearms when you were doing your protests in
9 Menlo Park?

10 A. As far as I can recall, that is true.

11 Q. And, again, when we reference the 2009 emails,
12 Exhibit 1, in all those occasions when you were carrying
13 unloaded firearms as part of your protests against NEA,
14 whether that initially be within the private property
15 where NEA is housed and then subsequently within the
16 public right-of-way on the sidewalk on Sand Hill Road,
17 did you always carry with you live ammunition for those
18 said firearms?

19 A. Yes.

20 Q. And we have the police reports that --

21 (Coughing interruption.)

22 A. Excuse me. Sorry. Went the wrong way.

23 Q. It happens. Are you okay?

24 A. I'm good.

25 Q. Have you read through all of the police reports

1 that the City produced in this litigation?

2 A. Not yet, no.

3 Q. Not yet? Okay.

4 Do you recall reading through any of the
5 reports that identify the particular types of firearms
6 that you had with you when you were protesting in the
7 City of Menlo Park?

8 A. I saw several reports with such identification.

9 Q. Okay. And would it be fair to say, Mr. Zeleny,
10 that between, let's say, 2008 and June of 2012 when you
11 were protesting either on the private property or within
12 the public right-of-way on Sand Hill Road, that when
13 police officers responded, that they would make contact
14 with you?

15 A. Yes. Either me or in the 2009 and I think 2010
16 occasions they made contact with some of my associates
17 and contract employees.

18 Q. Brian Wong, for example?

19 A. Michael Wong.

20 Q. Michael Wong, I'm sorry.

21 A. And Paul Mitchell, yes.

22 Q. And during those contacts they made with you,
23 did they ask to look at your guns?

24 A. Yes.

25 Q. And did you understand why they were asking to

1 look at your guns?

2 A. Yes, I understood that.

3 Q. What was your understanding of why they asked
4 you?

5 MR. ROBINSON: Objection. Calls for
6 speculation.

7 You can answer.

8 THE WITNESS: They wanted to check that the
9 guns were unloaded. And, in fact, in the course of one
10 such check the police officer apparently inadvertently
11 loaded the gun and was about to fire it when I stopped
12 him.

13 MR. MASTER: Q. Okay. Well, good. I'm glad
14 you did that.

15 So they told you or did they ask you,
16 "Mr. Zeleny, may we look at your firearms to make sure
17 they're unloaded?" Is that correct?

18 A. Yes.

19 Q. And your response to them was?

20 A. Yes. In the affirmative. Always.

21 Q. Always. So during the entirety of your protest
22 within the City of Menlo Park when police officers came
23 and asked you to inspect your weapons, you were always
24 very forthcoming saying, "Yes, you may take a look at my
25 weapons to confirm they're unloaded," correct?

1 A. That's correct.

2 Q. And after they confirmed that they were
3 unloaded, did they let you continue to do your protests?

4 A. Generally, yes. Sometimes they engaged me in
5 conversation.

6 Q. And the conversation they engaged you in was
7 what?

8 A. As to the purposes of my protest and various
9 background facts. There was one particular occasion in
10 which a female officer has attempted to interview me,
11 and I cooperated with that attempt.

12 Q. Did the Menlo Park Police Department at any
13 time prevent you from continuing your protests when they
14 made contact with you?

15 A. On numerous occasions I was asked to modify the
16 area of my appearances, to change or to lower the volume
17 of the music that my associates were playing at the
18 time, to move around the placards, that sort of thing.

19 Q. Okay.

20 A. So requests like that were made. And for a
21 time until I could cooperate with them in full, we had
22 to interrupt what we were doing.

23 Q. Okay. And when you say you had to interrupt
24 what you were doing, for example, if an officer asked
25 you to modify the volume of the music, you had live

1 music out there, correct?

2 A. Yes.

3 Q. And you understood that the individual or
4 businesses within the business complex did not
5 appreciate the volume of the music?

6 A. That's as it has been communicated to me. I
7 did not really believe it because all of the musicians
8 that I had hired, of all of them, none used any kind of
9 amplification.

10 Q. What kind of instruments were they using?

11 A. There was an accordion player, there was a
12 trumpet player. I guess the bagpipes player might have
13 been a bit loud. It's in the nature of the instrument.

14 Q. And that's the purpose of using the
15 instruments, correct?

16 A. The purpose is to attract attention.

17 Q. And where were the musicians stationed when
18 they did play music as part of your protests?

19 A. Inside the Rosewood Complex around the corner
20 of the building partially occupied by NEA.

21 Q. So when they were performing the music and you
22 were inside the complex, was that before you and NEA
23 entered into a settlement regarding their trespass
24 claim?

25 A. That was actually before they filed that

1 complaint. Simultaneous with their filing of the
2 complaint, the City of Menlo Park unilaterally decided
3 that the *Pruneyard* dispensation, to which I referred, I
4 believe, yeah, in this email, did not apply to me. So
5 they requested that I remove myself and my associates
6 from the Rosewood Complex, and we complied with that.

7 Q. And that was prior to June 2012?

8 A. That was in 2010, yeah.

9 Q. Okay. You also mentioned that you were asked
10 to modify the area of your protests?

11 A. Move around, yes.

12 Q. And when you say move around, what are you
13 referring to specifically?

14 A. I think there was at least one occasion in
15 which a Menlo Park police officer got the idea that they
16 were interfering with access to NEA. So he asked us to
17 move away from the passage, and we complied.

18 Q. And that was when you were on the private
19 property in front of the building?

20 A. That's right.

21 Q. Okay. So during your protests of NEA between
22 2008 and June of 2012, were there any particular
23 firearms that you would bring with you to those protests
24 or did you bring something new every time?

25 A. In 2010 I believe what I had on me was a

1 Winchester 97 trench gun and a bandolier full of
2 12-gauge ammunition. In 2012 I used military gear, body
3 armor, and a semi-automatic M14 type rifle.

4 Q. Let me ask you what these are because I just
5 don't know what these rifles are. And these are as
6 explained in the police reports. I can try to pull
7 those up if you need to. But this is the police
8 department's description of them. Whether they're
9 accurate or not is another story.

10 A. All right.

11 Q. They refer to a protest on June 21st, 2012 as
12 you carrying an LRB rifle. Do you know what that refers
13 to?

14 A. Yes. It's a semi-automatic version of the
15 military M14 type rifle.

16 Q. Okay. .308 caliber?

17 A. Correct.

18 Q. Okay.

19 A. 7.62 actually.

20 Q. What does that refer to?

21 A. It's the NATO designation to which .308 is a
22 commercial counterpart.

23 Q. They also identified you having a .357 Magnum
24 revolver.

25 A. I may have. If they say so, I'm sure I did.

1 A. No. The closest thing I had to a television
2 screen was a viewfinder on my film camera. I purchased
3 an outdoor television set subsequently to my acquittal.
4 And I featured -- I mentioned it in the correspondence
5 that I had with Menlo Park City authorities starting in
6 2015 with reference to my intent to display it in future
7 appearances.

8 Q. I appreciate that. I guess just to be
9 abundantly clear, I'm talking about -- you have not
10 protested out there since June 2012, correct?

11 A. That's correct.

12 Q. So at any time when you've been on-site, either
13 on NEA's property or within that complex or on Sand Hill
14 Road within the public right-of-way on the sidewalk, did
15 you ever use a television screen to promote any of your
16 theories or ideas as part of your protest?

17 A. I have to say no. I may have used an iPad, but
18 I'm only mentioning it because it's the only thing
19 similar to a television that I had available at the time
20 and I had it configured for that. I don't believe that
21 I brought it ever.

22 Q. Okay.

23 A. So the answer again, to emphasize, is no.

24 Q. So you say you had a portable battery --

25 A. Yes.

1 would be doing for you in reference to this part of
2 Exhibit 2?

3 A. Essentially all aspects of supporting my
4 presence on-site 24/7.

5 Q. Can you give me some examples of what you were
6 envisioning by needing to have someone there to support
7 you?

8 A. Oh, for example, just for one example, I would
9 have to have a porta-potty there. So somebody would
10 have to manage that. Somebody would have to provide me
11 with meals. Maybe assist with guarding the site at
12 night. That is the general thrust of it.

13 Q. So assist with guarding the site at night.
14 This would consist of, for example, you getting some
15 sleep and someone guarding the center median to protect
16 your weapons?

17 A. Something like that. An armed guard, yes, that
18 I would hire.

19 Q. And this porta-potty and the staff, they would
20 also be on-site in the center median with you?

21 A. That was the intent, yes.

22 Q. Okay.

23 A. I was intending to employ the bed of my truck
24 for most of the equipment.

25 Q. With the exception of the porta-potty.

1 A. That's correct, right.

2 Q. Okay. And how were you envisioning getting
3 onto the center median with your truck?

4 A. I was requesting that the City allow me to
5 drive onto it.

6 Q. Did you have a particular plan on how you would
7 access the center median?

8 A. I know how to get over a curb with my truck. I
9 have equipment for that. So yes. And the answer is in
10 the affirmative.

11 Q. So in the center median there's a curb there;
12 is that correct?

13 A. I believe so.

14 Q. So your idea was that you would use your
15 vehicle and get up over the curb and park on the center
16 median?

17 A. Yes.

18 Q. And in the center median, in addition to your
19 truck, the staff, and the porta-potties, that would
20 include -- and I'm referring to Exhibit 2 here, it's
21 line 5 -- exposed and unloaded military grade firearms;
22 is that correct?

23 A. That is correct.

24 Q. And it also indicates loaded ammunition feeding
25 devices for those specific firearms; is that correct?

1 A. Yes.

2 Q. Okay. And then you indicate -- you identify
3 some of those firearms; is that correct?

4 A. That is right.

5 Q. And you reference a 9mm Para semi-automatic SIG
6 P210 pistol?

7 A. That's right.

8 Q. And you would have associated live ammunition
9 separate and apart from that weapon, correct?

10 A. That is right.

11 Q. Then you would have a 7.65 x 51mm NATO,
12 N-A-T-O, all caps, semi-automatic LRB M25 rifle as well;
13 is that correct?

14 A. That is correct.

15 Q. And is that the same LRB rifle that we
16 referenced in prior photographs this morning?

17 A. It is one of them.

18 Q. Okay. And, in addition, you would have a
19 tripod-mounted belt-fed Browning, capital
20 B-r-o-w-n-i-n-g, M1919A4; is that correct?

21 A. Semi-automatic modifies both LRB M25 rifle and
22 belt-fed -- tripod-mounted belt-fed Browning M1919A4.
23 They're not machine guns. The actual military issue are
24 fully automatic.

25 Q. They're fully automatic.

1 A. These are semi-automatic, both of them.

2 Q. Okay. Now, in my doing quick research -- and
3 by no means am I the historian; you're the expert when
4 it comes to history so I'll let you correct me if I'm
5 wrong -- the belt-fed Browning M1919, is that a .30
6 caliber machine -- medium machine gun?

7 A. In this particular instance it's a highly
8 modified version of that weapon designed to fire in
9 semi-automatic mode only and to make it well-nigh
10 impossible to convert it to full automatic operation.

11 Q. So, forgive me, but being converted to
12 semi-automatic, is that something you did to this
13 particular firearm?

14 A. No, that's how they're sold. It's a particular
15 popular firearm for that purpose.

16 Q. And how many rounds a minute can you shoot with
17 the semi-automatic version of the Browning?

18 A. Quite frankly, I never even fired that thing
19 and I don't know if I intend to. I'm more of a rifle
20 man.

21 Q. Okay. And do you have a permit associated with
22 the Browning? Is it registered to you or do you have a
23 permit for it?

24 A. It is registered to me. There is no permit
25 required in this state to own a semi-automatic weapon.

1 Q. Where is it registered to you, what database?

2 A. That would be with California Department of
3 Justice.

4 Q. Okay. Did you ever -- I'm sorry. Go ahead.

5 A. If you wish, I can explain the process of
6 registration.

7 Q. Please do. That would be helpful.

8 A. The way you acquire firearms in this state, as
9 of now, there used to be some exemptions, but all modern
10 firearms made post-1898 have to be transferred to the
11 end user by a federal licensed dealer.

12 At the time of this transfer the end user
13 completes a 4473 form that basically answers the
14 questions of his eligibility under federal law to own
15 modern firearms. And he makes these assertions,
16 checking the relevant boxes on the form, under penalty
17 of perjury.

18 Ten days later -- there's a waiting period
19 mandatory in California. Ten days later, assuming the
20 Department of Justice running the checks with the FBI
21 comes back and indicates to the dealer, transferring
22 dealer, that there is no reason to prevent the transfer,
23 the end user may appear at the dealer and pick up his
24 weapon.

25 That is what happened with every weapon that I

1 own in this state, exclusive of those that I brought
2 with me upon moving here in 1983, having purchased them
3 in a different jurisdiction.

4 Q. Okay. Thank you very much.

5 Now, if you refer to Exhibit 3, which is in
6 that stack in front of you --

7 A. Oh, sorry.

8 Q. It's a separate document.

9 A. Right.

10 Q. If you look at Exhibit 3, I'll represent to you
11 this is a photograph that I pulled off the web -- I'm
12 not saying this is your gun -- when I searched for
13 belt-fed Browning M1919A4.

14 Does Exhibit 3, at least to your knowledge and
15 given your history and experience with these weapons,
16 does this accurately depict the type of weapon that you
17 were intending to bring with you as part of your special
18 event permit application?

19 A. That is right. The only exception in this case
20 being that I would have used a different tripod.

21 Q. Okay. So but for the tripod, the firearm
22 itself in Exhibit 3 is an accurate depiction of what you
23 described in your special event permit application?

24 A. That is right.

25 Q. Okay. Thank you.

1 Had you ever brought this belt-fed Browning
2 M1919A4 to any of your prior protests in Menlo Park?

3 A. No. I purchased this specifically for the next
4 round that hasn't commenced yet.

5 Q. When did you purchase the firearm?

6 A. If memory serves, I bought it in early 2015. I
7 can check that.

8 Q. Would it be fair to say sometime between your
9 acquittal in the criminal matter and the filing of your
10 special event permit application on July 10, 2015?

11 A. This would make sense to me. That's why I'm
12 guessing as to the date.

13 Q. I don't want you to guess. That's always a
14 word that lawyers don't like. But is that a fair
15 estimate of a time frame?

16 A. It is a fair estimate, yes. Sorry about that.

17 Q. That's fine.

18 Okay. I'm done with Exhibit 3 for the time
19 being. You can tuck that away.

20 You also reference in Exhibit 2, and I'm
21 looking at your email here in the first full paragraph,
22 that you intended to bring a 55-inch portable media
23 display powered by a portable gas generator; is that
24 correct?

25 A. That is right.

1 Q. And my understanding through subsequent
2 correspondence with the City is that you intended to
3 display that television -- and that's a television,
4 correct?

5 A. Yes.

6 Q. You intended to display that television from
7 the bed of your truck; is that correct?

8 A. That is right.

9 Q. And what direction would it be pointed to or
10 how would it be angled or configured vis-a-vis Sand Hill
11 Road?

12 A. Well, I should make a very general statement
13 here. I was asking the City for the parameters that it
14 would consider acceptable. I did not indicate any
15 particular direction. What I tried to do instead was to
16 elicit the City's requirements for approving the permit
17 and to comply with them. No such requirements were
18 furnished to me so that matter of orientation, along
19 with many other matters, was left undetermined.

20 Q. Did you actually specifically write in an email
21 or correspondence to the City asking the City which
22 direction of orientation the TV could be used?

23 A. I recall asking the City for its requirements
24 for approving an application like this. I recall asking
25 the City several times for these requirements. I never

1 received any sort of response to that inquiry.

2 Q. And pursuant to our prior discussion here and
3 your prior testimony today, to the extent that there
4 was, for lack of a better term, give and take between
5 you and the City with regard to either your special
6 event permit application or your subsequent film
7 application, that would be documented in writing?

8 A. Yes, indeed. And the only amendment I would
9 make to your characterization, it was all give on my
10 part. It would have been all take on the part of the
11 City.

12 Q. Okay.

13 A. I in this particular case, as on prior
14 occasions, have resolved to humor your client in any
15 requests that they make, to the extent that I'm capable,
16 without putting the kibosh on my entire performance.

17 Q. Okay. Now, the portable media display on this
18 55-inch television, you indicate here -- again, I'm
19 referring to Exhibit 2, the first page, the first
20 paragraph -- that it would display, quote, videos
21 featuring explicit representations of sexual violence
22 committed by NEA's publicly disgraced protégé, end of
23 quote.

24 Did I read that correctly?

25 A. That's right.

1 Q. Okay. And then you refer to a sample image.
2 Do you see that?

3 A. Yes.

4 Q. And that's from your LiveJournal?

5 A. Yes.

6 Q. And if you'd turn to Exhibit 4, which is in
7 front of you. Do you have that in front of you?

8 A. I got it.

9 Q. And is Exhibit 4 a document, as far as you
10 understand in looking at it, that is taken from your
11 LiveJournal?

12 A. Yes. Except this would have been an animation,
13 not a still.

14 Q. Thank you. That's what I wanted to ask you.
15 So contained within Exhibit 4 is an animation,
16 i.e., a cartoon, correct?

17 A. That's right.

18 Q. And I understand what you're telling me is that
19 when you go on your LiveJournal and you get to this
20 portion of it, it's not a still image. It's an image
21 that moves, correct?

22 A. That is right.

23 Q. Okay. Obviously I can't attach that here
24 today, so I'm giving you the still image version of it.
25 Right?

1 A. That's right.

2 Q. Okay. And so that's the sample of what you
3 wanted to display on the television monitor in the back
4 of your truck.

5 A. It is indeed one of the centerpieces.

6 Q. Okay. And that particular image that's
7 contained within Exhibit 4 to your deposition, had you
8 ever displayed that image in any of your prior protests
9 within the City of Menlo Park?

10 A. No.

11 Q. And why not?

12 A. It hadn't been created then. This posting
13 dates to December 14, 2012. Based on the date, I would
14 make my best recollection of the production of this
15 animation to date back to November, in November of that
16 year. So that would have been after my last appearance
17 in Menlo Park.

18 Q. Thank you.

19 Sir, if you could please turn to, it's the
20 third page within Exhibit 2, so I'm jumping around back
21 to Exhibit 2. Set Exhibit 4 aside. It's actually the
22 first page of the actual special event application.

23 Have you had a chance to look over this
24 application here today?

25 A. I'm looking at it right now.

1 Q. Okay. Go ahead.

2 A. But I would like to do it more thoroughly.

3 Q. Take your time.

4 A. Yes, we're done.

5 Q. Okay. I think you testified previously that
6 you prepared this application yourself, correct?

7 A. Yes.

8 Q. And that's your signature on the last page of
9 this exhibit, on Bates number MP240?

10 A. Yes, it is.

11 Q. Okay. Turning back to the first page of the
12 application that's Bates number 236, there's the
13 applicant name, which is yourself. I'm sorry.

14 MR. ROBINSON: Bottom right.

15 THE WITNESS: Okay.

16 MR. MASTER: Q. I'm sorry. When I refer to
17 Bates number, I'm referring to the number on the bottom
18 right.

19 The applicant name is yourself, correct?

20 A. M-hm.

21 Q. Yes?

22 A. Yes.

23 Q. And then organization name, Mass Means, Inc.,
24 is this a -- this event was going to be sponsored by
25 your company?

1 A. The company at that time was already a
2 suspended corporation. I was trying at the time to
3 reincorporate. So that was a bit of a hopeful
4 designation.

5 Q. Okay. And the name of your event was Child
6 Rape Tools; is that correct?

7 A. That is right.

8 Q. Okay. And then continuing down in these
9 various blocks here, we have the section the Purpose of
10 Event. We've already talked about that, correct?

11 A. That's right.

12 Q. And it's described there, correct?

13 A. Yes.

14 Q. The next box, if you will, is called Location
15 of Event. And that identifies the median strip on
16 Sand Hill Road at 2825 Sand Hill Road, correct?

17 A. Yes.

18 Q. Now, the way I understand it is 2855 Sand Hill
19 Road is actually the address of NEA within the complex.
20 Is that your understanding?

21 A. Yes.

22 Q. And the center median is actually right in the
23 middle of Sand Hill Road, correct?

24 A. That's right.

25 Q. And my understanding is that NEA's building

1 does not have a front or an entrance directly to
2 Sand Hill Road at the center median, correct?

3 A. That is right. That is why I specified this at
4 the median strip.

5 Q. Gotcha. Then continuing down under Event
6 Timeline, are you there?

7 A. Yes.

8 Q. We have the set-up and preparation, which you
9 indicate would begin on September 30th, 2015 at
10 9:00 a.m. and then end at 10:00 p.m.

11 Do you see that?

12 A. Yes.

13 Q. So 13 hours for set-up and preparation?

14 A. Yes.

15 Q. So did you envision taking an entire day to set
16 up your vehicle and put everything you need to put in
17 the center median to begin the event the following day?

18 Is that kind of the idea?

19 A. That was the idea, yes.

20 Q. And then the event itself would have begun the
21 following day, on October 1st, 2015 at 7:00 a.m.; is
22 that correct?

23 A. That is correct.

24 Q. And it would have been ongoing an indefinite
25 time period.

1 A. That was my request.

2 Q. Okay. If you continue to go down the
3 application, there's the -- next to the question that
4 reads, "Any City streets closed"; do you see that?

5 A. Yes.

6 Q. And you said no.

7 A. Yes.

8 Q. And did you do any analysis yourself to come to
9 that conclusion?

10 A. Yes, I did.

11 Q. And what was that?

12 A. I wouldn't be impeding any traffic on Sand Hill
13 Road, certainly not anywhere else. So there would be no
14 need for the City to close any streets.

15 Q. And how would you get -- because you're saying
16 that you'd be essentially living on that center median
17 because you have a porta-potty there, correct?

18 A. That's a fair characterization, yes.

19 Q. And how would the support staff -- would they
20 be living with you, was that your intention, or would
21 they be coming and going, relieving each other, if you
22 will?

23 A. They would be coming and going.

24 Q. And how did you envision them accomplishing
25 that?

1 A. I was contemplating hiring a security guard for
2 nighttime protection. Other people would come and
3 attend to the daily needs.

4 Q. I guess my question is, physically how would
5 you envision them getting there? How would they get to
6 and from the center median? For example, how would they
7 get to the event?

8 A. They would cross at a pedestrian crossing. I
9 believe the center median extends all the way from the
10 intersection. They would walk the center median to my
11 location and do whatever it is they have to do.

12 Q. And then obviously the reverse to leave.

13 A. Yes.

14 Q. And where were they going to be parking their
15 vehicles? Where did you envision that occurring?

16 A. I didn't really get that far. They could have
17 had one person driving a car or truck around, another
18 person descending and going to the median. It would
19 have been up for grabs. Maybe we could have negotiated
20 a parking space in the complex on the other side of
21 Sand Hill Road. I was contemplating that. There were
22 some contingency plans, in other words.

23 Q. Did you actually communicate with the folks on
24 the opposite side of Sand Hill Road to talk to them
25 about the idea of renting out or leasing some parking

1 spaces during your event?

2 A. No, I didn't. Because my first priority on
3 which everything else was contingent was to get to an
4 approval point with the City of Menlo Park.

5 Q. Continuing down on page Bates number 236, the
6 first page of your application, there's a section
7 entitled Temporary lighting. Do you see that?

8 A. Yes.

9 Q. And you indicate that there would be temporary
10 lighting, correct?

11 A. Yes.

12 Q. And that would consist of portable spotlights
13 focused on display.

14 A. That is right.

15 Q. When you say display, what are you referring
16 to?

17 A. The 55-inch television screen.

18 Q. So there would be -- now, the television screen
19 is self-illuminating, correct?

20 A. Yes, but around it I intended to display the
21 same kind of signage that you have shown to me in the
22 photographs.

23 Q. The placards?

24 A. Yes.

25 Q. So you envisioned having the television monitor

1 in the back of the bed of your truck and then displaying
2 those posters or placards that we previously looked at
3 along the center median as well, and you envisioned
4 having portable spotlights focused on the placards?

5 A. That is correct.

6 Q. Okay.

7 A. If I may, if you wish to think, if you wish to
8 understand what I had in mind, as you are driving, say,
9 on 280 you will see some billboards, some animations
10 even. That was the kind of thing I was trying to
11 achieve.

12 Q. So you were trying not just to catch the
13 attention of the folks working and/or driving along
14 Sand Hill Road, but to catch the eye, if you will, of
15 folks driving either north or south on 280?

16 A. No. I mentioned 280 in order to give you a
17 reference point.

18 Q. Yeah. Of where this would be occurring.

19 A. No. What kind of display it would be.

20 Q. Okay.

21 A. It would be just like some kinds of
22 advertisement that you see when you drive along the
23 freeway.

24 Q. I see those more on 101 than I do on 280.
25 That's why I was questioning.

1 A. You're right. I haven't been here in a couple
2 of years. Yes, 101 it is.

3 Q. So basically advertising on the road, that kind
4 of thing.

5 A. Yes.

6 Q. Okay. Thank you for clarifying that.

7 And I don't want to go through this entire
8 application, but would it be fair and correct that when
9 you filled this out, this was an accurate representation
10 of what you intended to do out there?

11 A. With the caveat that my whole attitude in this
12 process was to comply with any reasonable requirement
13 that the City might impose. And I believe I have
14 articulated that repeatedly in my emails.

15 Q. Okay.

16 MR. MASTER: Go ahead and mark this next. I'm
17 sorry.

18 (Defendants' Exhibit 5 marked for
19 identification.)

20 MR. MASTER: Q. So I'm showing you,
21 Mr. Zeleny, what's been marked as Exhibit 5. The other
22 copy is the same thing. This is for your attorney, if
23 he wants it.

24 A. Yes.

25 Q. I'll ask you just to take a moment or take as

1 much time as you'd like to look through what's been
2 marked as Exhibit 5, which I will reference is an email
3 chain Bates numbered MP290 through 294 and then --
4 actually, it's 295, with the last page being a
5 black-and-white photocopy of a photograph.

6 A. Right.

7 Q. Have you seen what's been marked as Exhibit 5
8 prior to today?

9 A. I have composed it so, yes, I have seen it.

10 Q. And would it be fair to say, without getting
11 into each of the emails, that this is a true and correct
12 copy or representation of communications that you had
13 with Menlo Park, either the City and/or Bill McClure,
14 the City Attorney, between the date of your application
15 dated July 10th, 2015 and July 28, 2015, which is the
16 email on the first page of Exhibit 5?

17 A. To answer with the utmost precision that I can
18 muster, I'm not in a position at this time to judge
19 whether or not any kind of editing has been performed on
20 this particular document. What I see appears to me to
21 be a true and correct printout of the email, but I
22 cannot vouch for it not having been modified by
23 somebody.

24 Q. Why don't you go ahead and take the time to
25 read through the email just to confirm. Because the

1 only thing I want to make sure of is that we're on the
2 same page and that I am showing you a true and correct
3 copy of emails that you have prepared and that have not
4 been edited. Okay?

5 A. The only way I could do that would be to look
6 at my email client and compare this document to that. I
7 don't think that's practicable.

8 Q. Okay.

9 A. So let's say for the sake of argument that I
10 concede that there's a very high probability that this
11 hasn't been tampered with.

12 Q. Well, what I'd like you to do, sir, so we don't
13 have to argue one way or the other on that is to take an
14 opportunity to read through your emails that are
15 attached within Exhibit 5 and, to your point, to the
16 best of the your ability indicate whether or not it
17 appears to be an email that you prepared, to the best of
18 your knowledge, and/or whether or not there is something
19 in here in one of your emails that clearly in your
20 opinion does not exemplify something that you would have
21 written. Okay?

22 A. Again, I'm not in a position to vouch for every
23 word here having been composed by me. Like I say, the
24 best I can -- I can tell you at this time without
25 looking at my copy that is on my clients -- we have a

1 computer here that I could compare it to, if you wish --
2 again, this does not appear to have been tampered with,
3 but I can't vouch for it.

4 Q. I'll represent to you that these are emails
5 that the City IT team, if you will, pulled off of the
6 City's server and were sent to me, which I printed out
7 and gave to you and which are in front of you today.

8 So with that being said, let me ask you this.
9 Looking at your email dated -- let me ask you, the first
10 page of Exhibit 5, does this appear to be an email that
11 you prepared?

12 A. As I said, yes, it has that appearance.

13 Q. Okay. And it's dated July 28, 2015. Do you
14 see that?

15 A. I see that.

16 Q. And do you recall sending an email to
17 Mr. McClure and the individuals identified in the CC on
18 or about that date in response to the City's initial
19 response to your special event permit?

20 A. I do.

21 Q. Okay. Now, in your email at the top there it
22 refers to attachments and it reads Browning
23 M1919A4.jpeg. Do you see that?

24 A. That is right.

25 Q. And if you look to the last page of Exhibit 5,

1 there is a black-and-white photocopy. Is this
2 a photocopy of the attachment that was included with
3 your email of July 28, 2015?

4 A. That is it, yes.

5 Q. And is this the actual Browning that you
6 intended to bring with you to the event that's described
7 in Exhibit 2?

8 A. From the tripod's head up it is the actual
9 weapon. The tripod would have been different. It would
10 have been much taller.

11 Q. Much taller, okay.

12 A. I do have this tripod as well. I didn't intend
13 to use it.

14 Q. So the photograph that's attached to Exhibit 5,
15 is that a photograph of your actual Browning?

16 A. That is right.

17 Q. Okay.

18 Let's go ahead and mark the next.

19 (Defendants' Exhibit 6 marked for
20 identification.)

21 MR. MASTER: Q. So I went ahead and marked as
22 Exhibit 6 to your deposition a September 21, 2015 letter
23 from the Office of the City Attorney of Menlo Park,
24 William McClure, City Attorney, addressed to you via
25 email and Bates numbered MP000352 through MP000355.

1 Have you seen this correspondence before today?

2 A. Yes, I have.

3 Q. Okay. And the email address that's identified
4 on the first page of Exhibit 6, is that your email
5 address?

6 A. Yes, it is, michael@massmeans.com.

7 Q. Do you recall receiving an email of this
8 correspondence on or about September 21st, 2015?

9 A. Yes, I do.

10 Q. And did you understand this to be the City's
11 response or initial response to your special event
12 permit application?

13 A. I did.

14 Q. And you understood the City to be denying your
15 application and the reasons are explained herein?

16 A. Yes.

17 Q. And attached to this correspondence is a
18 two-page document entitled Film Production in Menlo
19 Park. Do you see that?

20 A. Yes.

21 Q. Do you recall this attachment being included
22 with this email that you received?

23 A. Yes.

24 Q. And at that point in time did you have any
25 desire to apply to the City for permission to do a film

1 production in the City pursuant to the two pages that
2 were attached to this letter?

3 A. My intention was to exhaust every opportunity
4 at getting my special event permit approved. The
5 application for a film permit would have followed if my
6 application were deemed unsuccessful.

7 Q. So the idea was to exhaust the special event
8 permit process first. If that --

9 A. Yes. Sorry.

10 Q. That's all right.

11 If that didn't succeed, in your mind, then you
12 would pursue the film permit?

13 A. That's right.

14 Q. Okay.

15 Sorry. We're going to keep doing this for a
16 while here. Another document marked next in order.

17 (Defendants' Exhibit 7 marked for
18 identification.)

19 MR. MASTER: Q. Mr. Zeleny, I'm showing you
20 what's been marked Exhibit 7, which I'll represent to
21 you is an email chain, a chain of emails in two
22 thousand -- bear with me -- 2015 to 2016. The Bates
23 numbers are MP435 through MP450. And I'll give you a
24 moment to kind of look through that or read it at your
25 leisure, and then I'll ask you a couple questions.

1 you a minute to get there.

2 A. 439A. Yes, I do.

3 Q. Are you familiar with what's depicted on this
4 page of Exhibit 7?

5 A. Yes, I am.

6 Q. And what's depicted in this Google map, or map,
7 if you will?

8 A. It is a depiction of the median strip of
9 Sand Hill Road extending to the intersection and back to
10 280 and beyond. And the dark rectangle is where I was
11 proposing to park my truck.

12 Q. Okay. And is this a Google map that you
13 prepared?

14 A. It's a Google map that I prepared to the extent
15 of putting a black rectangle there required preparation.

16 Q. Right. And did you put the address points, or
17 whatnot, for where New Enterprise Associates is located?
18 Is that something you did in your search to create this?

19 A. No, that's all from Google except for the black
20 rectangle.

21 Q. Let me show you -- if you continue on within
22 Exhibit 7, the next page appears to be your special
23 event application.

24 A. 440?

25 Q. Yes, 440.

1 Q. -- bed and cabin, as driven to and parked at
2 the designated location?

3 A. Yes.

4 Q. The designated location is the area that you
5 identify with the -- well, it's a red rectangle, but we
6 have a black-and-white copy of that in the prior
7 exhibit?

8 A. Yes.

9 Q. And that's in the center median, correct?

10 A. Yes.

11 Q. And you continue to write in that paragraph
12 that you will remain on-site around the clock until NEA
13 publicly acknowledges its wrongdoing, et cetera; is that
14 correct?

15 A. Yes.

16 Q. Okay. So you indicated earlier that your
17 application, you had modified it so that you would be
18 there throughout October 2015 rather than starting
19 October 15 and going indefinitely.

20 Do you remember that?

21 A. Yes.

22 Q. By way of this email are you now suggesting
23 that you're going to be there until NEA publicly
24 acknowledges what they're doing, whether that occurs in
25 one day or 31 days or 60 days, or whatever days?

1 A. Okay. My expectation based on my previous
2 appearances was that once I started that, NEA would not
3 exist in its present form for longer than 30 days from
4 the start.

5 Q. So you thought you could get done what you
6 needed to get done and get them to acknowledge their
7 wrongdoing within the month of October?

8 A. If you recall, 2016 was when the Me Too
9 Movement started getting prominent. My expectation
10 would have been based on previous disclosures by NEA
11 that they're not exactly on a very firm footing in this
12 matter, and I would have fully expected their company to
13 implode within -- well before the 31-day term would have
14 ran out.

15 MR. MASTER: Okay. Let's mark this.

16 And you can put that here, sir. These are
17 always here if you need to reference them.

18 Let's mark that next. Forgive me, I'm not sure
19 why I printed it out so small, but we'll do our best
20 here.

21 (Defendants' Exhibit 10 marked for
22 identification.)

23 MR. ROBINSON: This is 10?

24 MR. MASTER: Yeah.

25 MR. ROBINSON: Todd, whenever you get to a

1 A. No, that is not correct.

2 Q. What's incorrect about it?

3 A. I requested the City to recognize my exemption
4 from a ban on open and concealed carry of firearms
5 pursuant to my acting as an authorized participant in a
6 video production. The City declined to recognize my
7 status like that based on their interpretation of
8 authorization lying exclusively with the City and not
9 with any member of the production itself.

10 Q. Okay. Let me ask you a question about that, a
11 couple questions about that. Number one, did you ever
12 have any intention to conduct your protest without
13 firearms?

14 A. No.

15 Q. Why not?

16 A. As I said before, I found firearms, conspicuous
17 display of firearms to be the best way of attracting
18 attention to my cause. I also found that the State of
19 California has carved out exemptions to the ban on open
20 and concealed carry of firearms that apply to authorized
21 participants in entertainment events and/or film or
22 video productions.

23 Pursuant to these statutes, I intended to hold
24 myself out as an authorized participant, not requiring
25 authorization from anybody but the parties conducting

1 A. Yes.

2 Q. And did you receive each of these documents on
3 or about September 5, 2017?

4 A. I did.

5 Q. And you understood this to be the City Council
6 advising you or the City advising you of the City
7 Council's decision to deny the appeal of your special
8 event permit application; is that correct?

9 A. Yes.

10 MR. MASTER: Okay. I've got the next one.

11 (Defendants' Exhibit 19 marked for
12 identification.)

13 MR. MASTER: Q. Mr. Zeleny, do you recognize
14 what's been marked as Exhibit 19?

15 A. Yes.

16 Q. And just for the record, Exhibit 19 is a
17 two-page email exchange Bates numbered MP1221 through
18 1222. And this appears to be your response to the
19 City's September 5th, 2017 denial of your special event
20 permit application dated September 7, 2017; is that
21 correct?

22 A. Yes.

23 Q. And by way of your email to Ms. Harada, who is
24 the City Clerk, you're requesting that Menlo Park
25 reconsider your special event permit application as

1 requesting a film permit?

2 A. That's correct.

3 Q. Okay. And we discussed that earlier today
4 whereby you wanted to run the course of the special
5 event permit and, depending on what happened there, you
6 would then proceed with the film permit, correct?

7 A. Yes.

8 MR. MASTER: Let's go ahead and mark this next.

9 (Defendants' Exhibit 20 marked for
10 identification.)

11 MR. MASTER: Q. Mr. Zeleny, I'm showing you
12 what's been marked as Exhibit 20, which is an email
13 chain including a, it looks like your application for
14 the film -- strike that -- along with some information
15 from the City concerning your desire to seek a film
16 permit.

17 A. Yeah.

18 Q. It's Bates numbered 1231 through 1238.

19 My question to you is, do you recall receiving
20 either the email from Mr. Milde or, sorry, Mr. Toews,
21 T-o-e-w-s, dated September 28, 2017?

22 A. That's how you pronounce it.

23 Q. Yeah.

24 A. Yes, I do.

25 Q. And by way of his September 28, 2017 email he

1 A. The television set that I have and that I have
2 offered as the major prop in this does have its own
3 speakers. I was not planning to amplify it
4 significantly past that.

5 Q. Are we talking about music? What kind of sound
6 is going to be emanating from this? Because we talked
7 about the animation. Was there sound associated with
8 the animation that would be on the TV?

9 A. I would have commissioned a musical
10 performance. That was the plan. And I would have
11 played it out in the course of the event.

12 Q. Did you describe that in any particularity at
13 all in your film permit application?

14 A. No, that was up in the air. And as I said,
15 time, place, and manner would have been subject to
16 discussion and amendment. So, in particular, I would
17 comply or attempt to comply with all reasonable requests
18 about the volume and the -- anything other than content
19 essentially.

20 Q. And you mentioned that you'd have cameras
21 directed to capture the public's response to your
22 presentation?

23 A. That was the intent, yes.

24 Q. When you say cameras, video? Still cameras?
25 Both?

1 A. Both.

2 Q. And are you looking to capture -- when you say
3 the public response, you're talking about vehicles?
4 Cyclists? Pedestrians? All the above?

5 A. I can't recall ever having seen a pedestrian on
6 that part, on that stretch of Sand Hill Road. There is
7 a lot of traffic that goes past these points. The first
8 wave is in the morning and the second wave is late
9 afternoon. So my interest was in filming the drivers
10 and passengers that go by the display, that look at it,
11 and that react to it.

12 Q. And what are you hoping to get at in terms of a
13 response from these folks? What reaction are you
14 looking for from these people?

15 A. It's not what reaction I'm looking for. It's
16 more of the kind of reaction I had received previously.
17 I'm making a pretty outrageous allegation. This
18 allegation, quite significantly, has never been denied
19 by any interested party. The City apparently assumes no
20 position in the matter. NEA apparently assumes no
21 position in the matter. Min Zhu never even denied the
22 accusation in the deposition that we have taken of him.

23 The display of this to people who are
24 integrated, presumably most of them are well-integrated
25 in the Menlo Park community, which is a very prestigious

1 community, it interested me to see how they would
2 respond to a disclosure of something that outrageous
3 happening in their community.

4 To that effect, I have previously received
5 responses, I have photographed them, I have videographed
6 them. There was a whole spectrum.

7 Q. What kinds of responses?

8 A. Some people were outraged, some people
9 expressed support. There was a girl that was delivering
10 food to Rosewood Complex. She gave me some drinks on
11 several occasions. I think she may have had some
12 personal interest in preventing child molestation.
13 There were firemen that egged me on pretty much, gave me
14 (indicating).

15 Q. Pulled the horn?

16 A. Gave me a visible gesture of approval.
17 Initially even the police officers of Menlo Park Police
18 have approved of this starting in 2006, I believe. So
19 there was a whole spectrum.

20 On the other hand, I have received a phone call
21 on one occasion in 2012 of a woman who represented
22 herself as a mother of children, who was conducting them
23 to school. She had her husband and their father working
24 at NEA, and the children have expressed -- had expressed
25 a concern for the safety of their father. So she aired

1 it out to me.

2 Q. What did you hope to do with the public
3 responses that you were filming? What would you do with
4 those responses?

5 A. Shut down NEA.

6 Q. Well, okay. I know that's the goal. But
7 physically what would you do with them? You're going to
8 be photographing people and videoing responses. What
9 would you be doing with the photographs and/or the video
10 that you're taking of drivers passing by and their
11 responses to your --

12 A. Publicizing them by every means available to
13 me.

14 Q. On the internet?

15 A. Wherever. Including the journalist that
16 previously expressed interest in this matter.

17 Q. And when you say their reactions, you're
18 talking about reactions to the placards, the television
19 monitor, the display on the television monitor, and/or
20 the firearms? What reactions are you looking for?

21 A. It's not what reactions I'm looking for. I
22 take whatever I get. I have a genuine interest in how
23 the general public considers this matter. I find it to
24 be pretty outrageous, but that's based on my own
25 beliefs.

1 Q. What's outrageous?

2 A. That a company that holds itself out as the
3 wealthiest, most important venture capital firm in the
4 world would knowingly and deliberately sponsor somebody
5 who has been credibly accused of incestuous child rape
6 and fled the country as a result of disclosing this
7 accusation.

8 Q. And I believe you said in one of the emails
9 when it was asked of you that in terms of reactions, you
10 weren't intending to point a firearm at someone and get
11 their reaction.

12 A. Never.

13 Q. Okay. So your plan in terms of getting
14 reactions was to have the firearms present, not pointed
15 at anybody, but have your television screen on the back
16 of your -- well, this wouldn't be in the back of a truck
17 now, this would be on the corner of Sand Hill Road and
18 the entrance to Rosewood -- having all that there and
19 just filming reactions to all of it taken as a whole?

20 A. That's right.

21 MR. MASTER: Let's do this one next.

22 (Defendants' Exhibit 22 marked for
23 identification.)

24 MR. MASTER: Q. What I went ahead and marked
25 as Exhibit 22 appears to be a follow-up email that you

1 to be with the special event permit, but in this
2 particular instance where you were going to put the
3 guns, where you were going to put the TV monitor, where
4 you were going to put the generator; you just felt like
5 that wasn't your responsibility?

6 A. Based on my previous exchanges with the City
7 starting in 2015 and leading up to December 21st of
8 2017, my last communication with them, I received a firm
9 impression of a game being played where I am asked to
10 spell out the criteria for my entertainment event,
11 first, second, film permit, and then the City would come
12 up with objections to the specific criteria.

13 The caselaw from the Ninth Circuit that I have
14 cited, the ruling in *Epona, LLC v. County of Ventura*,
15 clearly and unambiguously says that that is
16 impermissible. It is up to the local authorities to
17 spell out the criteria with which an applicant may
18 attempt subsequently to comply. That hasn't happened.

19 Q. Okay. Why are you applying for a film permit?

20 A. I think I already answered that. I was
21 applying for a film permit in order to display my
22 animations and associated content and film the responses
23 of the drivers that pass by that display on Sand Hill
24 Road. That is a film. That is a film production.

25 Q. Anything to do with your desire to carry

1 unloaded firearms?

2 A. Absolutely, yes. I am -- as an authorized
3 participant in a film production, I am allowed by
4 California law to carry unloaded firearms in the process
5 of that production.

6 Q. Okay. And so as part of this film permit we
7 discussed earlier -- I'm looking at Exhibit 24. I'm
8 sorry to jump around on you.

9 A. No problem.

10 Q. On the first page of Exhibit 24, this is your
11 November 9, 2017 email to Mr. Toews answering some
12 questions. In paragraph 4 relating to the site plan,
13 you reference the 55-inch SunBrite outdoor television
14 being mounted in a Gator G-Tour E-Lift powered by a
15 generator.

16 Do you see that?

17 A. That is right.

18 Q. Where did you envision placing that?

19 A. I was envisioning placing that on the City
20 grounds that run along Sand Hill Road where there is no
21 sidewalk.

22 Q. So would that be on the pavement or would it be
23 in the brush, the dirt?

24 A. That would be in the brush and the dirt where
25 the cars don't drive.

1 Q. Okay. But not in the center median. You're
2 talking about on the side closest to NEA.

3 A. The center median issue had been resolved. The
4 City declined to accommodate me and the center median in
5 the course of my application for an entertainment
6 permit. So I didn't revisit that.

7 Q. Okay.

8 A. Because that was the one instance in which the
9 City -- I can't think of any other one -- in which the
10 City actually spelled out its criteria.

11 Q. Okay. And how were you intending to get the
12 television, the E-Lift, the generator, and all the
13 equipment identified on Exhibit 24 to that location?

14 A. I expected to have somebody that I hired to
15 drive a truck there to stop there for a few minutes, as
16 allowed by the Vehicle Code, and to unload the equipment
17 with me and then to set it up after -- well, I wouldn't.
18 Somebody else would set it up after the truck drives
19 away.

20 Q. Would they be stopped on the side of Sand Hill
21 Road?

22 A. I think so, yes. That was what I was
23 contemplating. If the City had objected to it, I would
24 have found some other way.

25 Q. Have you ever been convicted of a felony?

1 A. No.

2 Q. Okay.

3 A. Not even a misdemeanor.

4 MR. MASTER: Damion, I'm just going to refer to
5 the complaint and just ask a couple of questions. I
6 want to make sure that he has it in front of him. I'm
7 not going to attach it as an exhibit. It's a filed
8 document.

9 Q. This is document number one in this case,
10 Complaint for Declaratory and Injunctive Relief. And
11 I'm going to refer you to page 6.

12 And before I ask you this question, sir, I
13 should have asked you this. I asked earlier but just
14 now that you have the document in front of you, you've
15 read this document before today, correct?

16 A. I did.

17 Q. And when you read through it, you concluded
18 that everything was accurate in terms of what was set
19 forth in there?

20 A. Yes.

21 Q. Okay. So at line 14 on page 6 of the
22 complaint, it's under the caption "Zeleny becomes aware
23 of Min Zhu's conduct." Do you see that?

24 A. Yes.

25 Q. So my question here in paragraph 27 where you

1 describe becoming aware of his conduct when you
2 developed a professional and personal relationship with
3 Erin Zhu, and you say here from the early 1990's to
4 2000, my question is, in 2000, is that when either the
5 professional relationship terminated or the personal
6 relationship terminated or both terminated?

7 A. Our personal relationship terminated around
8 '95, I believe. Erin and her boyfriend at the time
9 lived in my house for several years. We also, Erin and
10 I and five of our employees, maintained a business
11 there, first a partnership and, secondly, a corporation
12 that was created in keeping with a deal that Erin had
13 made with WebEx on our behalf.

14 Q. And what was the name of your company?

15 A. Our partnership was named ptyx. That's Peter,
16 Thomas, Y, and X. And the corporation was called Live
17 Share, as I previously said.

18 Q. And do you still maintain a professional
19 relationship with Ms. Zhu?

20 A. Not at all.

21 Q. So if the personal relationship ended in 1995,
22 when did your professional relationship end with her?

23 A. We entered a dissolution agreement in late '99.
24 Erin performed under it for about a year, and at the end
25 of 2000 she declined to continue.

1 Q. Okay.

2 A. So that's when we stopped being business
3 associates.

4 Q. Okay. So as of the end -- well, 1999 or early
5 2000, that would be when you last had communication with
6 Ms. Zhu or a relationship with her in any capacity?

7 A. I had her deposed in a lawsuit. In my lawsuit
8 against her and her parents and WebEx I had her deposed.
9 That deposition took place in 2004, late 2004, if memory
10 serves. That was the last time I saw her.

11 Q. Okay. And so just a practical question. I
12 appreciate your concern about what you claim Mr. Zhu to
13 have done, which is horrific. But given -- I'm sorry.
14 Go ahead.

15 A. One thing, I have to amend my previous
16 response. Looking at this, these dates, I was mistaken
17 in saying that I filed my lawsuit in late 1999. It was
18 actually in late 2000.

19 Q. Okay. Thank you. That was your lawsuit
20 against WebEx?

21 A. Correct.

22 Q. Okay. Thank you.

23 So the question is, the outstanding one I
24 prefaced just a moment ago, was why 20 years later are
25 you still doing what you're doing in terms of protesting

1 right for the most effective way of exposing this
2 horrendous conduct.

3 Q. Okay.

4 A. That does, in fact, as I said previously,
5 involve exposed and conspicuous carry of firearms
6 because I found through experience that that attracts
7 the most attention.

8 Q. Okay. And have you been told by the City that
9 if you complete your application for a film permit, that
10 you would be permitted to carry, openly carry unloaded
11 weapons as part of an issued film permit?

12 A. That is what the City said. But at the same
13 time, the City declined to spell out the conditions that
14 it imposed on approving the permits.

15 Q. Okay.

16 A. And the Ninth Circuit case that I previously
17 cited identified that kind of behavior as impermissible
18 violation of the First Amendment.

19 Q. Did the City ever tell you that your film
20 permit was actually denied or did the City tell you that
21 your film permit was incomplete?

22 A. The City told me that my film permit was
23 incomplete. The City also told me -- invited me to
24 complete it, while declining to spell out the criteria
25 under which it would be considered.

1 I, JUDY BRENNAN, a Certified Shorthand Reporter
2 duly licensed by the State of California, do hereby
3 certify:

4 That MICHAEL ZELENY, the witness in the
5 foregoing deposition, was by me duly sworn to testify
6 the truth, the whole truth, and nothing but the truth,
7 in the within-entitled cause;

8 That said deposition was reported at the time
9 and place therein stated by me, and thereafter
10 transcribed under my direction;

11 That when so transcribed, the witness was
12 afforded the opportunity to read, correct and sign the
13 deposition.

14 I further certify that I am not interested in
15 the outcome of said action, nor connected with, nor
16 related to, any of the parties in said action or to
17 their respective Counsel.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this _____ day of April, 2019.

20
21 
22 JUDY BRENNAN, CSR NO. 5138
23
24
25

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual,

Plaintiff,

vs.

No. 17-cv-07357-RS

EDMUND G. BROWN, JR., an
individual, in his official
capacity, et al.,

Defendants.

EXHIBITS (VOLUME 1) 1 - 17

to the

DEPOSITION OF MICHAEL ZELENY

Monday, March 18, 2019

1100 Alma Street, Suite 210

Menlo Park, California

MADELEINE M. FRED A, INC.
Certified Shorthand Reporters

Reported by:
Judy Brennan
CSR No. 5138
Our File No. 48464

2000 Broadway
P.O. Box 3119
Redwood City, CA 94064
(650) 365-6152

From: larvatus@gmail.com <larvatus@gmail.com>
To: Bruce Goitia <policechief@menlopark.org>
Cc: Subrah Iyar <Subrah.Iyar@webex.com>; Scott Sandell; David W. Affeld <DWA@affeldlaw.com>
Sent: Mon Oct 26 16:25:20 2009
Subject: Notice of Public Protests in Menlo Park
 Dear Chief Goitia,

Please be advised that my associates and I will hold open-ended peaceful public protests starting 27 October 2009, in front of NEA, 2855 Sand Hill Road, Menlo Park, CA 94025 and Cisco/WebEx, 3979 Freedom Cir, Santa Clara, CA 95054. The purpose of the demonstrations will be to protest Subrah Iyar's employment by Cisco/WebEx and Scott Sandell's employment by NEA and Min Zhu's association with it, as explained at <http://www.subrah.com>.

My associates and I will exercise a right to free expression on private property readily accessible to general public, pursuant to the rulings in *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980) and progeny. It is our belief that the strip of private property directly in front of the main entrances to 2855 Sand Hill Road, Menlo Park, CA 94025 and 3979 Freedom Cir, Santa Clara, CA 95054 falls within the purview of *Pruneyard* in virtue of housing several unrelated businesses and being readily accessible to the general public. Additionally, owing to death threats received in the matter at issue, and police and hotel management misconduct at a previous event, we shall exercise our right to bear arms pursuant to the Second Amendment of the U.S. Constitution and all applicable federal and state laws, by carrying exposed, unloaded firearms, legally owned by my associates and me in the state of California, accompanied by loaded magazines and speedloaders, subject to the definitions of *People v. Clark*, 45 Cal.App.4th 1147, 53 Cal.Rptr. 2d 99. None of the firearms in question will qualify as assault weapons under California law, as listed or described in Penal Code Sections 12276, 12276.1, and 12276.5. My associates and I agree to Section 12031(e) inspections of our firearms on demand by police officers. Please take note of case law, beginning with *Florida v. J.L.*, 529 U.S. 266 (2000), to the effect that detaining a man observed as openly carrying an unloaded firearm in public violates the Fourth Amendment. My associates and I are pledged to abide by all applicable laws. Our prior events in San Diego, Milpitas, and Santa Clara were unmarked by any disturbances, and we hope that the same will be the case in your jurisdiction. We intend to enforce our right to free expression to the full extent of the law, against any illegal infringement. We will not interfere in any way with the operation of NEA, Cisco/WebEx, or any of their employees, associates, or visitors, including, but not limited to, Iyar and Sandell. Concerned parties may address their communications to my lawyer David W. Affeld, 12400 Wilshire Boulevard, Suite 1180, Los Angeles CA 90025, phone: (310) 979-8700, fax: (310) 979-8701. I may be reached at the number listed below.

Michael Zeleny@post.harvard.edu -- <http://larvatus.livejournal.com/> -- 7576 Willow Glen Road, Los Angeles, CA 90046 -- 323.363.1860
 All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail better. -- Samuel Beckett

Ex. No.	1
Plt. <input type="checkbox"/> Def. <input type="checkbox"/> Pot. <input type="checkbox"/> Resp. <input type="checkbox"/>	
Wit:	Zeleny
Date:	3.18.19
Judy Brennan, CSR #5138	

MP000002

This electronic mail message, including any attachments hereto, is intended only for the addressee and may contain privileged and/or confidential information. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you are hereby notified that you must not use, disseminate, copy it in any form, or take any action based upon it. If you have received this message by error, please immediately delete it and any copies of it, including any attachments hereto, and notify the sender at New Enterprise Associates by reply electronic mail message, fax or phone.
Thank you.

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From: larvatus@gmail.com on behalf of Michael Zeleny
To: McClure, William; Scott Sandell; Milde, Matt L; Police Chief
Cc: David W. Affeld; Peter Shimamoto
Subject: Special Event Permit Application
Date: Friday, July 10, 2015 11:05:37 AM
Attachments: [Special Event Permits - Completed Application - stored.pdf](#)

Michael Zeleny
michael@massmeans.com
zeleny@post.harvard.edu
7576 Willow Glen Road, Los Angeles, CA 90046
voice: 323.363.1860
fax: 323.410.2373

City of Menlo Park
Matt Milde
Recreation Program Coordinator
mmilde@menlopark.org
701 Laurel Street
Menlo Park, CA 94025
voice: 650.330.2223
fax: 650.330.2242

By email, fax, and postal mail.

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu, and continuing until NEA publicly acknowledges its wrongdoing and severs its relationship with Min Zhu, Scott Sandell, and Dick Kramlich. I shall be present on site around the clock, served by support staff and equipped with fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed Browning M1919A4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/371973.html>. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z/>. My display will be confined to the median strip on Sand Hill Road directly across the NEA headquarters. No obstruction of automotive or foot traffic will take place. Please contact me to arrange for the payment of the special event fee and discuss any organizational matters. Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes Zucker LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice: 310.979.8700, fax: 310.979.8701.

cc:

Ex. No.	2
Pin. <input type="checkbox"/> Def. <input checked="" type="checkbox"/> Pet. <input type="checkbox"/> Rsp. <input type="checkbox"/>	
Wit:	Zeleny
Date:	7.18.19
Judy Brennan, CSR #5138	

MP000234

Bill McClure
Menlo Park City Attorney
wjm@jsmf.com voice: 650-330-6610
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
voice: 650.324.9300
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Robert Jonsen
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701 Laurel St.
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Scott Sandell
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ssandell@nea.com
2855 Sand Hill Road
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United States
voice: 650.854.9499
fax: 650.854.9397

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles, CA 90046 | voice: 323.363.1860 | fax: 323.410.2373
<http://larvatus.livejournal.com> | "All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail better." — Samuel Beckett



CITY OF MENLO PARK

Special Event Application

701 Laurel Street, Menlo Park, CA 94025 Ph: 650-330-2223 Fax: 650-330-2242

Applicant Name: Michael Zeleny					
Organization Name: Mass Means, Inc.					
Name of Event: Child Rape Tools					
Address: 7576 Willow Glen Rd		City: Los Angeles		State: CA	Zip: 90046
Home Phone: 323-363-1860		Alternate Phone: none			
E-mail Address: zeleny@post.harvard.edu		Fax: 323-410-2373			
Estimated Attendance: drive-by only		Event open the public: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Number of Event Staff: 1		Number of Event Volunteers: 5			
Purpose of Event: Outing New Enterprise Associates as the corporate sponsors of incestuous child rapist Min Zhu.					
Location of Event (please be specific and attach map): 2825 Sand Hill Rd, Menlo Park, CA 94025, at the median strip, per the attached.					
Event Timeline	Day	Date	Start Time	End Time	Total Hours
Set up/Preparation	Wed	9/30/2015	9 a.m.	10 p.m.	13 hours
Special Event	Thu	10/1/2015	7 a.m.	ongoing	indefinite
Tear down/Clean up					
Do you plan to use a City building or park? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Do you plan to use Private Property? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		If yes, do you have written approval from Private Property owner: Yes <input type="checkbox"/> No <input type="checkbox"/>	
City Facility Reservation Permit Included: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Pending <input type="checkbox"/>		If yes, provide address of location:			
Any City streets closed? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Any sidewalks blocked? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Traffic Control Plan Included: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Name of streets:					
Renting barricades from City: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Park sprinklers turned off: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Amplified sound (i.e. Music, PA system): Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Time of use: 7 a.m. to 9 p.m.					
Temporary lighting: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Please describe: Portable spotlights focused on display.					
Charge for event: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> \$_____/person			Event is reoccurring more than annually?: Yes <input type="checkbox"/> No <input type="checkbox"/>		
Is this event a fundraiser: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Proof of 501c3: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Will alcohol be served: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			ABC Permit Attached: Yes <input type="checkbox"/> No <input type="checkbox"/> Pending <input type="checkbox"/>		
Will you be selling alcohol: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>					
Will food be served: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			I will apply for San Mateo County Temporary Event Food Permit: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Pending <input type="checkbox"/>		
Will you be selling food: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>					
Selling any other items: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Menlo Park Business License: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Describe:					
Will portable rest rooms be provided: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			No. of portable toilets <u>1</u> No. of ADA compliant portable toilets <u>0</u>		
Will you be using a tent, canopy, or other temporary structure? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			Please describe: Canopy to be erected at the median strip of Sand Hill Rd. MP 000236		

SECTION 2: EVENT NARRATIVE

Event Description

Briefly provide a description of the event, including activities, timeline, and sequence of events:

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu. I shall be present on site around the clock, equipped with fully operational, exposed and unloaded firearms and loaded ammunition feeding devices therefor, in full compliance with all applicable laws. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities.

Parking

Describe where event participants are expected to park their vehicles:

Off-site parking only; all on-site transportation to be provided to drop off and pick up the participants.

Security / Emergency Action Plan

Describe the security plan, including crowd control (including the security company name, contact information, and the amount of security personnel):

No need for crowd control is anticipated, owing to the lack of sidewalks and no stopping allowed on the Sand Hill roadside. Participant assumes full personal responsibility for the lawful defense of the site.

Americans with Disabilities (ADA) compliance

Describe how the event will be accessible to people with disabilities (such as parking, restrooms, and accessible path of travel to all event functions):

N/A.

Recyclables and garbage handling

Describe the plan for cleanup and removal of recyclable goods and garbage during and after the event (include if additional street sweeping will be arranged).

All garbage generated by the event will be picked up promptly and removed from the site daily for sanitary and lawful disposal.

Please note: For larger events where additional garbage removal will be needed, please contact Recology at www.recologysanmateocounty.com or call (650) 595-3900. Failure to remove trash from event will result in a \$250 fine.

SECTION 3: SITE MAP CHECKLIST

Please provide a detailed site plan/route map of the event on a separate sheet. If site map is larger than 11x17 size paper, please provide SIX (6) copies of this map in application packet. The map should include the following information:

- | Yes | N/A | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Outline of event site, including names of streets or areas that are a part of the venue and surrounding area. If the event includes a moving route (i.e. parade or run), indicate the direction of travel and start/finish locations. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Any street or lane closures |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The locations of fencing, barriers or barricades. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Location of first-aid facilities |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of all stages, platforms, booths, food areas, trash containers, tents, etc (include dimensions) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Generator locations and/or source of electricity |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Placement of vehicles or trailers used for the event (include dimensions) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Anticipated parking locations and number of parking (include ADA parking) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Placement of promotional signs or banners |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Placement of portable restrooms (including labeling ADA restrooms) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Exit locations for events with fences |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of all event activities |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of temporary lighting |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of sound system |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fire truck access to existing building/structures shall remain clear and unobstructed (20 feet minimum) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fire equipment shall remain clear and unobstructed (25 feet minimum) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | For large event, traffic impact and traffic handling plan including re-routing of vehicles, bicycles, and pedestrians. |

Note: Incomplete and vague site maps will delay the permit process.

SECTION 4: INSURANCE INFORMATION

A Certificate of Liability Insurance must be provided and must contain the following:

- The special event permit name must be listed as the one "Insured."
- The policy must not expire before the planned event date.
- The policy must be for a minimum of \$1,000,000 unless otherwise specified.
- The "description" should list the rental location, day, and event planned.
- The City of Menlo Park at 701 Laurel Street, Menlo Park, CA 94025 must be noted as "additional insured."

A special event permit will not be issued until the required application fees, insurance, and other supplementary materials, as indicated in the Special Event Application, have been received. A special event permit issued for a private function on private property is not required to submit proof of liability insurance to the City.

SECTION 5: PUBLIC NOTIFICATION

Public Notification will be required for some permits based on your application. If noise ordinance is exceeded, the Planning Division will prepare a public notice to be mailed to all property owners, residents, and businesses within 300 feet of the subject property. The notice will state the decision of the City and will serve as the noise permit unless the request is appealed. The Planning Division will mail the notices on the decision date, which starts the 10-day appeal period. If the Planning Division does not receive an appeal in writing, the decision will become effective on the 11th day. If the decision is appealed, the item will be scheduled for the next available Planning Commission meeting. The Planning Commission generally meets on the first and third Mondays of every month. The minimum lead-time between an appeal and a Planning Commission meeting is approximately 3-weeks. The decision will also be posted at the Civic Center and on the City's web page: www.menlopark.org.

SECTION 6: FIRE DISTRICT NOTIFICATION

If necessary, you will be asked to seek approval of the Menlo Park Fire Protection District. They will be informed of any street closures and other impacts to emergency services. Please keep in mind that there are several streets within Menlo Park that cannot be closed because they are deemed primary response routes. You must receive Conditional of Approval from the City prior to contacting the Fire District.

SECTION 7: POLICE STAFFING

For events requiring Police assistance, the Police Department will review the application and be involved in the initial meeting with the applicant. Based on the details for the event, the Police Department will provide an estimate of costs based on the number of officers needed and hours needed at the event (payment of 50% of estimated Police services is due before your permit can be issued). Post event, an invoice will be provided by the to the applicant for Police services (based on incurred costs, minus any pre-paid amount). Any additional costs incurred that were not anticipated such as extra staffing or longer hours will be billed to the applicant. All payments are due to the Menlo Park Police Department by contacting Sgt. Matt Ortega at (650) 330-6347. Non-payment for Police assistance after the event will result in the inability to apply for a special event permit in the future, until any balance is paid in full.

SECTION 8: PARK USAGE

Rental fees for special events held on city parkland, picnic areas, or tennis courts may be applied and are subject to availability. Please review the city's Master Fee Schedule for current park usage fees. Additionally, the organizing party of an event held in these areas is responsible for following all park rules, usage guidelines, and city ordinances. Sharon Park is reserved for weddings only.

SECTION 9: SOUND

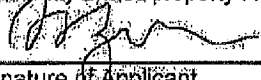
Approval of a Special Event permit does not necessarily exempt the planned event from the requirements of Chapter 8.06 (Noise) of the Menlo Park Municipal Code. All sources of sound measured from any residential property shall not exceed 50 dBA during the "Nighttime" hours, or 60 dBA during the "Daytime" hours. Nighttime hours are considered the period between 10 p.m. and 7 a.m. daily. If you believe your planned event could exceed the noise limitations set by Chapter 8.06 of the Municipal Code, please discuss the noise permitting requirements with a member of the Planning Division. A noise permit can be obtained as part of the Special Events permit application, subject to review and action by the Planning Division and the public notification and appeal process set forth in Section 5. The Planning Division can be reached at (650) 330-6702 or by email at planning@menlopark.org.

SECTION 10: CONFIRMATION

Please check all that apply:

- ☒ I have read all policies regarding the Special Event Application process.
- ☒ I have reviewed the Special Event Permit FAQs.
- ☒ I have read and will abide by all Sections as written and described herein.
- ☒ I am submitting the most current version of the Special Event Permit Application found at: www.menlopark.org/eventpermits
- ☒ I am providing the correct payment with my application.
- ☒ I have filled out all portions of this application completely and to the best of my knowledge.

I hereby certify and agree that I shall be personally responsible on behalf of myself/organization for any damage sustained by the facility, property, or equipment, as a result of the occupancy of said facility or property by my group/organization. I hereby waive, release, discharge and agree to indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any and all claims by any person or entity, demands, causes of action or judgments for personal injury, death, damage or loss of property, or any other damage and/or liability occasioned by, arising out of or out of the event for the actions (active or passive) of invitees, event participants, event sponsors, and event spectators while on the property, or resulting from this reservation of the facilities or use of property. I hereby declare that I have read and understand and agree to abide by and to enforce the rules, regulations, and policies affecting the use of the facilities or property. If any portion of the Special Event is held on non-city owned property I have included letters of approval for each respective property owner.


Signature of Applicant

10 July 2015

Date

Payment Information:

☐ Cash ☒ Check ☐ Visa ☐ Mastercard

Amount \$250 (\$125 minor / \$250 major)

Account # _____ Exp. _____ Account Holder Name _____

I agree to pay the above charges and authorize the City of Menlo Park to charge these costs to my credit card. Checks payable to: City of Menlo Park.

Authorized Signature: _____

Note: There is a \$30 charge for returned checks. Additional fees from other city departments may be required before permit may be issued, please refer to the Master Fee Schedule for updates on current fees.

Office Use Only

Date Permit Submitted: _____		Project No. _____	
Permit Payment \$ _____		Date _____	
Processed By _____		Date _____	
Approval	Department	Received	Fee
	Police		(60% Fee)
	Planning		
	Public Works		
	Engineering		
	Public Works		
	Maintenance		
	OSD/Recreation		
REQUIRED	Fire District		
Yes <input type="checkbox"/> No <input type="checkbox"/>			

Event Permit Coordinator

- ☒ Application Initial Review Complete
- ☒ E-mail Acknowledgement Sent to Applicant (Date: _____)
- ☒ Application Sent to Permit Committee
- ☒ Site Map Complete
- ☒ Insurance Certificate Provided
- ☒ Other Agencies Permits Included
- ☒ Public Notification Complete
- ☒ Approved to exceed noise ordinance ☐ Yes ☒ No
- ☒ Staff Approvals Complete
- ☒ Traffic Control Plan Approved (Street closures only)
- ☒ Conditions of Approval or Denial Letter Sent (Date: _____)
- ☒ Other Department Fees Paid
- ☒ Barricade Rental Information (Requesting _____ 3 barricades and _____ 12 barricades)
- ☒ Final Copies Sent to Approving Staff

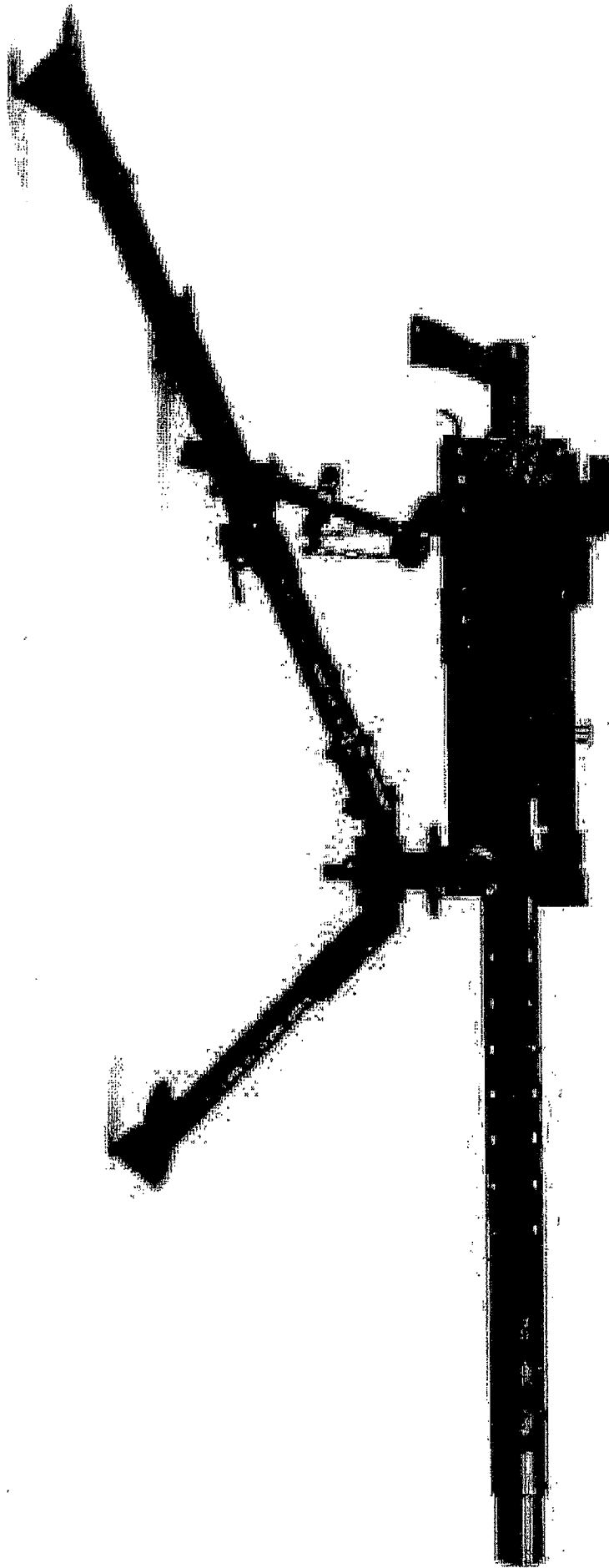
Special Event Permit Application Approval

Signature of Permit Coordinator

Date

Updated: 07/24/14

MP000240



Ex. No. 2
P/A ☐ Del ☒ Fel ☐ Resp ☐
W/H: Keleny
Date: 3.18.19
Judy Brennan, CSR #5138

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the origins of webex - larvatus prodeo

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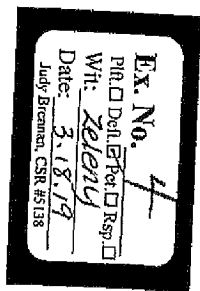
December 14th, 2012

04:10 pm



[Link] the origins of webex

As savvy politicians are wont to observe, victory has a hundred fathers but defeat is an orphan. The progenitors of WebEx number four: high-powered financier Scott Sandell, salesman extraordinary Subrah Iyar, brilliant engineer Min Zhu, and his bodacious daughter Erin YierBargeld. Here is a graphic representation of their relationship:



3/14/2019

the origins of webex - larvalus prodeo



Tags: [business](#), [degenerates](#), [ethics](#), [sex](#), [tasteless](#), [webex](#)

([4 comments](#) | [Leave a comment](#))

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Comments

From: [Q_hyok_kim](#)

Date: December 15th, 2012 10:58 pm (UTC)

[\(Link\)](#)

The reason.....

Why did she leave you? I am sorry if you're affronted by my question.

I did notice about photos and how people smile in their photos. All three gents you mentioned smile in a particular fashion in their photos.

I don't like that kind of smile and do not trust people who smile like that in their photos.

I do like how you portray your face in your photos and your parents as well.

I never smile in photos.

[\(Reply\)](#) [\(Thread\)](#)



From: [Q_larvatus](#)

Date: December 19th, 2012 11:09 pm (UTC)

[\(Link\)](#)

Re: The reason.....

Love is evanescent. A better question to ask is why she stayed with my business after leaving me. The wench is desperate for approval. As her subsequent career suggests, she sells herself as a serial entrepreneur.
[\(Reply\)](#) [\(Parent\)](#) [\(Thread\)](#)

From: [Q_hyok_kim](#)

Date: December 20th, 2012 12:54 am (UTC)

3/14/2019

the origins of webex - larvatus proddeo

[\(Link\)](#)

Re: The reason.....

"Love is evanescent."

Now, that is the most beautiful, accurate, and concise definition of 'love' I've read. I didn't even know the word, 'evanescent' even existed.

I can see why you consider yourself a poet.

For some reason, it reminds me of the last scene in the movie, 'Once upon a time in America', where 'Noodles' drifted into opium drenched sleep/melancholia where the camera focuses into his face and smile from the ceiling.

[\(Reply\)](#) [\(Parent\)](#) [\(Thread\)](#)



From: [Q larvatus](#)

Date: December 20th, 2012 08:45 pm (UTC)

[\(Link\)](#)

Re: The reason.....

Poets make things. I consider myself an assclown.

[\(Reply\)](#) [\(Parent\)](#) [\(Thread\)](#)

[Subrah Iyar Appreciation Society](#) Powered by [LiveJournal.com](#)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

MICHAEL ZELENY, an individual,
Plaintiff,

vs.

No. 17-cv-07357-RS

EDMUND G. BROWN, JR., an
individual, in his official
capacity, et al.,

Defendants.

EXHIBITS (VOLUME 2) 18 - 28
to the

DEPOSITION OF MICHAEL ZELENY

Monday, March 18, 2019

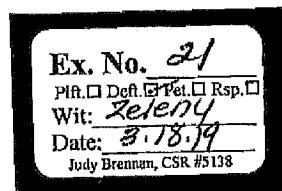
1100 Alma Street, Suite 210

Menlo Park, California

MADELEINE M. FREDA, INC.
Certified Shorthand Reporters

Reported by:
Judy Brennan
CSR No. 5138
Our File No. 48704

2000 Broadway
P.O. Box 3119
Redwood City, CA 94064
(650) 365-6152



From: Michael Zeleny
 To: Toews, Ivan J
 Cc: Harada, Jeleny Y; McGuire, William; McIntyre, Alex D; Bertini, David C; dwa@agzlaw.com; Fienel, Nicolas A
 Subject: Re: Notice re Menlo Park City Council Decision
 Date: Friday, October 06, 2017 3:04:25 AM
 Attachments: image001.png
 Encroachment Permit-Film Permit - signed.pdf

Dear Mr Toews,

Attached please find a completed application for a film permit.

Starting on 30 October 2017 and continuing through 27 December 2017, I shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu. I shall be present in the vicinity of 2825 Sand Hill Road from 08:00 till 18:00 every weekday, served by a support staff of one personal assistant and one cinematographer. My props are to include fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed semiautomatic Browning M1919a4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/374973.html>. Two tripod-mounted cameras will be placed on either side of Sand Hill Road, focusing on public reactions to my display. One of them will be attended by a cinematographer. I will operate the other one remotely. All their footage, complemented by output of body cams, will be live streamed on the Internet.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z>. All placements of equipment and personnel will be determined to avoid interference with automotive and foot traffic, in consultation with the Menlo Park City authorities. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park City authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

Please note that my standing and circumstances require accommodations not anticipated by your application format and requirements. As an individual engaged in a non-profit endeavor of public interest, I hereby apply for a waiver of all applicable fees. I will furnish all requisite liability waivers and procure the appropriate insurance coverage upon your conditional approval of this application.

Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice: 310.979.8700, fax: 310.979.8701.

Michael@massmeas.com | Zeleny@post.harvard.edu | larvatus.livejournal.com | subrah.com
 7576 Willow Glen Rd, Los Angeles, CA 90046, U.S.A. | voice: 323.363.1860 |
 fax: 323.410.2373

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

On Thu, Sep 28, 2017 at 1:00 PM, Toews, Ivan J <IJToews@menlopark.org> wrote:

Dear Mr. Zeleny,

Please see attached film permit application and film permit conditions. Application can be submitted via email. Thank you.

MP001242

Ivan Toews- Land Development Engineer

City of Menlo Park |

701 Laurel St. | Menlo Park, CA 94025

Direct (650) 330-6712 | Fax 650-327-5497

itoews@menlopark.org



From: Nicolas A. Flegel [mailto:naf@ismf.com]
Sent: Wednesday, September 27, 2017 11:35 AM
To: michael@massmeans.com
Cc: Harada, Jelena V <jvhara@menlopark.org>; McClure, William <wlm@ismf.com>; McIntyre, Alex D <admcintyre@menlopark.org>; Bertini, David C <dcbertini@menlopark.org>; dwa@agzlaw.com; Toews, Ivan J <itoews@menlopark.org>
Subject: RE: Notice re Menlo Park City Council Decision

Dear Mr. Zeleny,

Thank you for your email of September 7, 2017, requesting that the City of Menlo Park reconsider your special events permit application as a film permit application. The City has asked that I respond to your email. The City has a film permit application process, and therefore you should submit a film permit application to staff. This is a different permit than a special event permit, so you will need to follow/comply with the film permit requirements. I am copying Ivan Toews of the Public Works Department, who handles film permits, and am requesting Ivan by this email to forward you the necessary application and information. Ivan's contact information is:

Ivan Toews- Land Development Engineer

MP001243

City of Menlo Park |

701 Laurel St. | Menlo Park, CA 94025

Direct ~~(650) 330-6712~~ | Fax ~~(650) 327-5497~~

~~info@menlopark.org~~

Thank you for your attention to this matter.

Nick Flegel

~~(650) 324-9300~~

From: Michael Zeleny (~~mailto:michael@massmeans.com~~)

Sent: Thursday, September 7, 2017 2:28 AM

To: Harada, Jelena V <~~jvharada@menlopark.org~~>

Cc: William L. McClure <~~wlm@jsmf.com~~>; ~~grubens@addl.com~~; McIntyre, Alex D
<~~admcintyre@menlopark.org~~>; Bertini, David C <~~dcbertini@menlopark.org~~>; David W. Affeld
<~~dwa@agglaw.com~~>

Subject: Re: Notice re Menlo Park City Council Decision

Thank you for your email. In keeping with the substance of our exchanges in last week's hearing, and in the mutual interests of efficiency, I would like the City of Menlo Park to reconsider my special event permit application as requesting a film permit.

The salient points of my request are as follows:

- The videography is to take place alongside ~~2855 Sand Hill Road, Menlo Park, CA 94025~~, and continue indefinitely, Monday through Friday, from 8 a.m. to 7 p.m.;
- All participants, cameras, and props will be placed so as to avoid any interference with automotive and foot traffic;
- The City will recognize all participants in the film production that are so authorized in advance by myself, as exempt from sanctions for carrying a concealed firearm or openly carrying an unloaded handgun or a long gun under California Penal Code Sections 25400 (a) (2), 26350 (a) (1), and 26400 (a), pursuant to the relevant exemptions under P.C. Sections 25510, 26375, and 26405, as applicable to authorized participants in a motion picture, television or video production, or entertainment event.

I remain open to reasonable time, place, and manner regulations.

Please let me know how to proceed in order to ensure an expeditious determination from the City authorities.

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles, CA 90046 | voice: 323.363.1860 | fax: 323.410.2373.

http://harvatus.livejournal.com | "All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail better." — Samuel Beckett

On Sep 5, 2017, at 10:14 PM, Harada, Jelena V <jvharada@menlopark.org> wrote:

Mr. Zeleny,

Attached is correspondence informing you of the Menlo Park City Council's decision made at the City Council special meeting of August 29, 2017, related to your Appeal of Denial of Special Event Permit Application. This item is also being sent to you via US mail.

Sincerely,

Jelena Harada

Deputy City Clerk

City of Menlo Park

701 Laurel St., Menlo Park, CA 94025

650-330-6612 | jvharada@menlopark.org

<image001.jpg>

<Zeleny Letter - city council action.pdf>





City of Menlo Park
Engineering Division
701 Laurel Street
Menlo Park, CA 94025
Telephone (650) 330-6740

PERMIT NO.: _____
Keep this permit at the work site at all times

Call 24 hours in advance of working in the public right
of way AND for each inspection request.
Uninspected work will be rejected.

ENCROACHMENT PERMIT APPLICATION

- ☐ Major Encroachment
☐ Minor Encroachment

- ☐ Temporary Encroachment
☐ Debris or Container Box

- ☒ Other FILM PERMIT
☐ City-Mandated Repairs

ONE PERMIT PER ADDRESS

Location of Work 2825 Sand Hill Rd, Menlo Park, CA 94025	Applicant Represents <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Owner		Applicant e-mail: Applicant fax: zeleny@post.harvard.edu			
Name of Applicant (person) Michael Zeleny	Address 7576 Willow Glen Road	City Los Angeles	State CA	Zip 90046	Telephone 323-363-1860	
Name of Contractor n/a	Address	City	State	Zip	Telephone	
California Construction License No. n/a	Menlo Park Business License No. n/a		Est. Start Date 30 October 2017		Est. Complete Date 29 December 2017	
Estimated Construction Cost (Estimate work in city R/W only. Do not include value of utility.) \$0	Bond or Deposit * \$ to be furnished	Bond or Deposit provided by: <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Other (provide name, company, address)				

Description of work to be done:

Making a multimedia presentation and filming public responses thereto.

Applicant submits the following:

- ☐ 3 copies of sketch or plans
☐ 3 copies of traffic control plans
☐ Insurance certificate

Call Underground Service Alert (USA) at 1-800-227-2600 before you dig

GENERAL CONDITIONS OF PERMIT ATTACHED.

Signature below acknowledges that special working hours may apply – check the approved traffic control plan.

I hereby acknowledge that I have read this permit and the attached conditions, that the information given by me is correct, that I am the owner or the duly authorized agent of the owner, and that I agree to comply with the conditions and all applicable provisions of state laws, city ordinances, and the rules of any governmental agency involved.

Signature of Applicant (Owner or authorized agent)	Principal	Title	Date 6 October 2017
---	-----------	-------	------------------------

DO NOT WRITE BELOW THIS LINE – CITY STAFF USE ONLY

Approved by Engineering Division	Date	Permit expires	Fees (retained by City)	\$
		Total Due to City	<input type="checkbox"/> Paid	\$

* Bond or deposit requests must originate from the bond/deposit provider. A copy of the original receipt must accompany the refund request. All deposits or bonds are subject to forfeiture to comply with City Codes and Ordinances.

MP001248



GENERAL CONDITIONS OF PERMIT

Engineering Division
701 Laurel Street
Menlo Park, CA 94025

Notification of Work or Inspection Requests: (650) 330-6740

1. This permit, regardless of when dated, shall not be in effect until the applicant has obtained all licenses and other permits required by law.
2. This permit is declared ~~null and void~~ if work has not commenced three (3) months after the date of permit issuance.
3. Traffic control plan is required for work that will block public right-of-way. Plan shall include re-routing of vehicles, bicycles and pedestrians.
4. Any damages to existing facilities and improvements above ground or below ground, shall be promptly repaired or replaced at the permittee's expense, and claims for damage to City property must be promptly paid.
5. Applicant is responsible for determining exact locations or depths of existing utilities or other facilities. Call Underground Service Alert (USA) at 1-800-227-2600 a minimum of 48 hours prior to performing work.
6. Applicant carries sufficient insurance to work in the public right of way, and names City of Menlo Park as additional insured. Applicant agrees to keep insurance active for the duration of the project.
7. All work shall comply with the City and Caltrans Standards, including traffic control.
8. ~~Street Opening, Sidewalk, Curb and Gutter, and Driveway Permits.~~ Permittee shall notify the Public Works Inspector at least 24 hours prior to: beginning work, inspection requests, or concrete placement. The number and type of inspections required, and any tests that may be required will be as directed by the Public Works Inspector. The Public Works Inspector may be contacted by calling (650) 330-6740.
9. All trench plates used in the public right of way must have a non-skid surface.
10. Construction activities are restricted to Monday through Friday (City holidays excepted) between the hours of 8:00 AM and 5:00 PM, unless otherwise approved in writing by the Engineering Services Division.
11. A faithful performance bond or a cash deposit in an amount equal to the estimated cost of the proposed work is required for curb and gutter, driveway, or street opening permits.
12. This grant of permission does not constitute a deed or grant of easement by the City, is not transferable or assignable and is revocable at any time at the will of the City.
13. This permit does not authorize tree trimming or tree removal.
14. The traffic control plan as attached must be adhered to at all times. *Note that the traffic control plan may have restricted working hours for working in the public right of way, which supersedes the standard encroachment permit working hours.*
15. The use of City property by permittee shall be limited to the purposes set forth by this permit and no structures of any kind, except those expressly permitted shall be erected or placed thereon.
16. Debris boxes/storage containers shall have reflectors so that they can be seen at night. This permit must be taped to the outside of debris boxes in a visible location.
17. This permit does not include overnight street parking for any vehicles. A separate parking permit can be obtained from the Police Department.
18. All stormwater BMP's must be in place between October 15th and April 15th, or as directed by the Public Works Inspector.
19. Additional conditions (if any) are attached to this permit and shall be followed accordingly.

Additional Conditions:

Exhibit 3



anti-slapp - larvatus prodeo

[\[Recent Entries\]](#) [\[Archive\]](#) [\[Friends\]](#) [\[Profile\]](#)**March 17th, 2005**

05:45 pm

[\[Link\]](#) **anti-slapp**

Following a sanction awarded against them in Santa Clara for failing to stipulate to a change of venue, [WebEx Communications, Inc.](#) got judicially sanctioned for the second time yesterday for bringing up its mendacious libel lawsuit, [Los Angeles Superior Court](#) Case No. BC324927, against Michael Zeleny. Defendant Zeleny brought his [anti-SLAPP motion](#) against plaintiff WebEx on February 25, 20005, arguing that WebEx filed its lawsuit in order to infringe [his Constitutional right to participate in a public forum](#). On March 16, 2005, Judge Michael L. Stern granted Zeleny's motion on two out of three causes of action remaining against him. The fourth cause of action had been previously dropped by WebEx prior to their failed opposition in the November 5, 2004 hearing on Zeleny's change of venue motion in Santa Clara Superior Court, where it originally filed its lawsuit. Upon [the granting of that motion](#), Santa Clara Superior Court Judge Socrates Manoukian exercised his discretion in consideration of plaintiff WebEx having knowingly and maliciously brought up its lawsuit against defendant Zeleny in a wrong venue, by ordering them to pay his attorneys' fees. Under California law, a similar award is mandatory in favor of defendant prevailing in an anti-SLAPP motion, in an amount to be determined in a subsequent hearing.

Thus WebEx shareholders continue paying for a failed attempt to cover up WebEx founder and ex-President [Min Zhu's rape of his daughter Erin Zhu](#). There remains their libel claim against Zeleny. WebEx objects to Zeleny's claim that WebEx used 5,000 shares of its stock that it owed to Zeleny's company to pay hush money to Min Zhu's daughter Erin for [her childhood rape by Min Zhu](#). WebEx further objects to Zeleny's claim that [his life had been threatened in the names and on the behalves of Min Zhu and WebEx](#). Look forward to hearings in this lawsuit determining the disposition of sociopathic child rapist Min Zhu [on his way out](#) as an executive of a publicly traded American corporation.

Tags: [lawyers](#), [webex](#)[\(Leave a comment\)](#)[Log in to stop seeing ads in this journal](#)[Subrah Iyar Appreciation Society](#) Powered by [LiveJournal.com](#)

ZEL 0007

Exhibit 4

“i’m somebody now!” © 1979 navin r. johnson - larvatus prodeo

[\[Recent Entries\]](#)[\[Archive\]](#)[\[Friends\]](#)[\[Profile\]](#)

February 9th, 2012

07:02 pm



[\[Link\]](#) **“i’m somebody now!” © 1979 navin r. johnson**
Man with semi-automatic weapon protests at hotel



With due respect to [Buffalo Springfield](#), there’s a man with a gun over there, and what he wants ain’t exactly clear.
“There” is a corner of Sand Hill Road at the entrance to the Rosewood Sand Hill hotel near Interstate 280 in Menlo Park. The man with the gun said he is Los Angeles resident Michael Zeleny, who showed up there on Thursday (Feb. 9). He’s wearing a surplus military uniform complete with combat helmet and bullet-proof vest. He’s carrying a semi-automatic M14 military rifle that he says is unloaded, and a long-lens camera.
Police arrived, questioned the man, but made no arrest. [\[And so on, with photos and comments.\]](#)

By Dave Boyce
Almanac Staff Writer



UPDATE: To clarify, here is my comment, partially redacted by the [Almanac](#) because "[their] forum is not the place to make allegations of criminal wrongdoing":

Thanks to Dave Boyce for this fair and balanced report.

In regard of my demands, the hotel complex at which I am holding my protest also houses [New Enterprise Associates \(NEA\)](#), self-described in their court filings in connection with this matter as our world's wealthiest and most important venture capital firm, with over \$11 billion under management. It is also the firm that funded its protégé Min Zhu, the founder of [WebEx Communications](#), right after my [outing](#) of him as a rapist of his 14-year old daughter at [the 2005 WebEx user conference in San Francisco](#) caused Min [to resign from his job and flee the United States](#). The public deserves to learn the lesson Min had taught me, that a violent incestuous paedophile will treat his business partners like family.

I might have overlooked this matter even after receiving independently witnessed death threats against me and my family, made in the names and on the behalves of Min Zhu and WebEx, in the course of our \$70 million business dispute. I went public with my story only after my father Isaac, plaintiff in a related lawsuit, died from injuries sustained in an apartment fire of suspicious causes and origins. As the poet said, [there is some shit I will not eat](#). An apology from all responsible parties is in order.

You can find my story along with links to supporting documentation at [subrah.com](#).

Tags: [law](#), [police](#), [webex](#)

([1 comment](#) | [Leave a comment](#))

[Log in to stop seeing ads in this journal](#)

Comments

(Deleted comment)

From:  [larvatus](#)

Date: February 10th, 2012 04:31 am (UTC)



Roger wilco.

([Reply](#)) ([Parent](#)) ([Thread](#))

([Link](#))

[Subrah Iyar Appreciation Society](#). Powered by [LiveJournal.com](#)

Exhibit 5

notice of peaceful protests in the san francisco bay area - larvatus prodeo

[\[Recent Entries\]](#)[\[Archive\]](#)[\[Friends\]](#)[\[Profile\]](#)

June 25th, 2012

04:09 pm



[\[Link\]](#) **notice of peaceful protests in the san francisco bay area**

Dear Bay Area law enforcement personnel,

Over the following year, I shall reside and appear in your jurisdictions, exercising my fundamental rights under the First and Second Amendments to the Constitution of the United States in the course of ongoing peaceful public protests, as documented at <http://www.subrah.com/> and <http://larvatus.livejournal.com/tag/webex>. The attached images and the article "[Man with semi-automatic weapon protests on Sand Hill](#)", published in a local newspaper, should give you an adequate idea concerning the parameters of my performances.



notice of peaceful protests in the san francisco bay area - larvatus prodeo



2/7/2019

<https://larvatus.livejournal.com/343319.html>

ZEL 0249

2/11

notice of peaceful protests in the san francisco bay area - larvatus prodeo

2/7/2019



ZEL 0250

I conduct my protests in response to independently witnessed and officially documented death threats made against me and my family in order to deter us from pursuing claims recorded in a lawsuit subsequently filed in California Superior Court, County of Santa Clara as case No. 1-02-CV-809286, *Zeleny v. Zhu and WebEx*, in the names and on the behalves of Min Zhu and WebEx Communications, Inc. The evidence of these threats and their gravity sufficed for Judge Jacob Adajian of Los Angeles Superior Court to acquit me on 11 April 2003 of weapons carry charges on the grounds of necessity, in a bench trial of case No. 2CR11665. In accounting for his acquittal, he ruled:

He wouldn't get a gun permit. He wouldn't get a gun permit. We just don't issue those in L.A. unless you're a movie star or somebody who shouldn't have one. But they manage to get one. Attorney's [sic.] should have one. I couldn't get one when I was an attorney. I know when I became a judge, a responsible person, I was able to get one. Not as an attorney. I think he had a good-faith belief in the threat. He did go to the police. He did do the right thing.

Ten months after this decision, [my father Isaac Zelyony](#), plaintiff in a related lawsuit No. 1-02-CV-810705, styled *Zelyony v. Zhu*, suffered fatal injuries in an apartment fire that appeared to start at two locations at once. A thorough investigation of causes and origins of this fire, which a retired Los Angeles Fire Department captain undertook on my behalf, failed to rule out the likelihood of foul play. My father was important to me. I am seeking amends for unlawful threats of violence that were followed by his violent death under suspicious circumstances. As of this writing, I have a [pending lawsuit in federal court](#) against callers who [warned me that my father's death was not an accident and promised to arrange for me to rejoin him](#). I am protesting the ongoing institutional and individual support of a violent sexual deviant, who represents a grave personal threat to me and my family.

WANTED: SUBRAH IYAR



CHILD RAPE TOOL

**WHAT WOULD YOU DO IF YOU FOUND OUT THAT YOUR
BUSINESS PARTNER BRUTALLY RAPED HIS DAUGHTER?**

- ☐ REPORT HIM TO THE POLICE**
- ☐ REFER HIM TO A PSYCHIATRIST**
- ☐ USE CORPORATE ASSETS TO COVER UP HIS RAPE**
- ☐ GIVE HIM MONEY TO START ANOTHER BUSINESS**

WANTED: SCOTT SANDELL



CHILD RAPE TOOL

WHAT WOULD YOU DO IF YOU FOUND OUT THAT YOUR

BUSINESS PARTNER BRUTALLY RAPED HIS DAUGHTER?

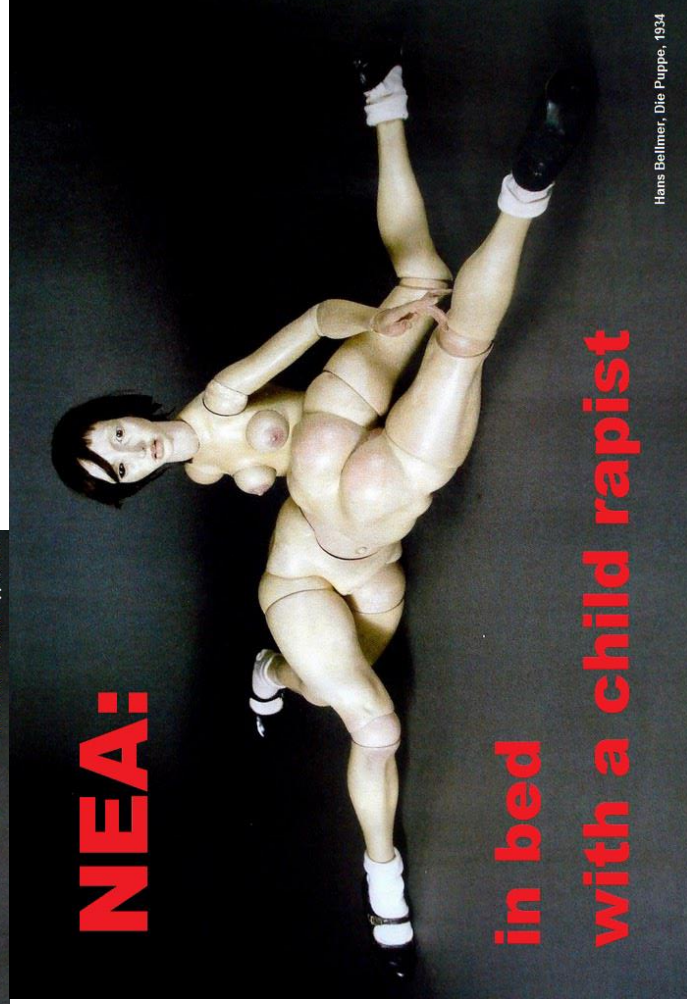
☐ REPORT HIM TO THE POLICE

☐ REFER HIM TO A PSYCHIATRIST

☐ USE CORPORATE ASSETS TO COVER UP HIS RAPE

☐ GIVE HIM MONEY TO START ANOTHER BUSINESS

As law enforcement officers, you are well placed to assess my situation. For starters, you might consult the 1988 sealed police report of childhood sexual abuse made by Min Zhu's then 14 year-old daughter Erin. On numerous occasions Erin recounted Min's prior use of the terms that failed to dissuade me from pursuing my claim against him and his company, to persuade her to yield to his sexual advances. Her subsequent complaints of her molestation by Min Zhu can be found on newsgroup alt.sexual.abuse.recovery via [Google Groups search for the terms "Erin Zhu sexual abuse"](#). Additionally, they can be found along with her draft complaint against Min Zhu for childhood sexual abuse, [her email correspondence with Blixia Bargeld](#) to that effect, and various declarations by third parties attesting to the same facts, as matters of public record in Santa Clara Superior Court case 1-02-CV-809286, *Zeleny v. Zhu & WebEx*. Erin Zhu has authenticated the accounts of her rape by her father that she had authored and relayed or publicized, in sworn depositions in that case. Moreover, in a sworn deposition taken by John Walton on 3 November 2003, in *Zelyony v. Zhu*, Santa Clara Superior Court Case Number CV-810705, she confirmed under oath having settled her childhood sexual abuse claim against her father Min Zhu for \$300,000, paying her lawyer David Affeld a contingency fee of 2.5%. She admitted having participated in the preparation of the draft complaint, which included a graphic description of her rape by Min Zhu. She acknowledged that after she settled her claim against them, her parents made her the beneficiary of a trust; and although she denied linking it to the settlement, she later settled a claim by her lawyer, who sued her for a contingency fee portion of the trust. While denying on that occasion that her childhood sexual abuse by her father involved "penetration", Erin Zhu confirmed under oath having told her lawyer when they prepared the draft complaint that it did involve penetration, and never having told him otherwise; and she further confirmed under oath that this sexual abuse occurred between 1 and 20 times. I urge you to consult the relevant parts of the transcript of Erin Zhu's referenced deposition, as entered in evidence and permanently consigned to the public record in *NEA v. Zeleny*, San Mateo Superior Court Case No. CIV499465, in the context of California Penal Code Section 263 providing: "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime."



My revelations of these facts failed to diminish the support of Min Zhu by the Menlo Park venture capital firm New Enterprise Associates (NEA). By NEA's accounts, its business relationship with Min Zhu began in 1999 when it invested

in the company that he founded, WebEx Communications, Inc. According to SEC filings, NEA's General Partner Scott Sandell was on the Board of Directors of WebEx until February 2002. In his sworn declaration Sandell testified that "Min Zhu was a consultant at NEA, with the title Venture Partner, from March 17 2004 through March 2008." NEA has acknowledged that in 2004 I emailed them about Erin Zhu's claims concerning her childhood sexual abuse by her father Min Zhu. In my communications I pointed out that Erin verified under oath having made these claims between 1991 and 2001 in conversation with her friends, associates, and employees; in public Usenet postings and letters to her husband Blixa Bargeld; and in statements to her lawyer David Affeld in connection with the claim for childhood sexual abuse that he presented to her parents and settled on her behalf. My notices went unanswered and had no effect on NEA's support of Min Zhu and his position at WebEx. Meanwhile, WebEx's CEO Subrah Iyar attempted to cover up Min Zhu's rape of his daughter. In the course of defending against my lawsuit under his leadership, WebEx filed sworn corporate declarations claiming that there was "absolutely no truth" to the allegations that Min had raped his daughter seven years prior to its founding, while allowing him to use its corporate assets as hush money to buy her silence about his crimes, and employ its corporate counsel in defending against my claims made against him as an individual, independently of his connection with WebEx. Min Zhu resigned from WebEx and fled the United States to China only after I exposed him as a child rapist at the WebEx User Conference in San Francisco, on 2 May 2005. Yet in September of the same year, NEA funded Min Zhu's next venture in China, in full knowledge of the foregoing events. Witness [this pointed observation](#) published by China Venture News on 23 September 2005: "What's missing in the Private Equity Online article or any NEA release is any mention of the previous controversy surrounding NEA's venture partner, Min Zhu, who joined NEA in 2004, after his forced resignation as WebEx President and Director." Another side of Min Zhu's character is captured in the 2007 report of a joint investigation of WebEx by FBI and NSA, which found it illicitly transferring the records of its customers' confidential communications to China. To connect the dots, [NEA's knowing sponsorship of a duplicitous child rapist](#) has been an open secret in the venture capital community for over seven years. This is especially noteworthy in an industry, whose [foundations can be shaken](#) by a female partner's displeasure at [receiving a copy of Leonard Cohen's *The Book of Longing* from her male colleague](#).

[According to Min Zhu](#), as of 2008, NEA continued to invest money in his company Cybernaut. I have no reason to doubt that their business relationship has continued to this day. By all accounts, Min Zhu has established himself as an excellent profit earner, inspiring investments from numerous profit-seeking institutions and individuals undeterred by scruples about his character. In bringing to light its defects, I look forward to finding out, how far the turpitude of Silicon Valley capital is matched by its shamelessness.

Please be assured that I am sensitive to your concerns for public safety. Accordingly, in the course of my Constitutionally protected activities, I pledge to abstain from any unlawful actions, including, without limitation, the following:

- loading any firearms in the absence of a reasonable fear for life or limb;
- deploying or firing any deadly weapons or firearms in the absence of a clear and present danger to life or limb;
- making any threats of unlawful violence, including, but not limited to, drawing or exhibiting any deadly weapons or firearms in the presence of another person, in a rude, angry, or threatening manner;
- stalking, accosting, or harassing any individual, including, but not limited to, making harassing telephone calls to any individual or institution, or sending harassing correspondence to any individual or institution by any means;
- making any statement or engaging in a course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose; and

- capturing visual images or audio recordings of any individual who has a reasonable expectation of privacy, or otherwise attempting to frustrate such an expectation.

I am pleased to point out that my prior events in San Diego, Milpitas, Menlo Park, and Santa Clara were unmarked by any disturbances. I hope that the same will be the case on this occasion of scaling up my activities within the bounds of legitimacy sanctioned by the authorities of the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. Owing to substantial gains in my quest for legitimate remedies, my protests shall include topical artistic performances by bagpipers, clowns, rappers, and a brass band. I shall employ portable generators, high-intensity floodlights, and night vision devices to discover the identities and whereabouts of other friends and supporters of Min Zhu. It is my position that the mounting of these performances and the use of these instruments are protected under the First Amendment, and therefore are not subject to local permit requirements. However, as an accommodation provided in the spirit of courtesy, I shall consider reasonable requests for placing time, place, and manner constraints on my performances on a case-by-case basis. Lastly, I continue to claim the right protected by the First Amendment, to hold press conferences at the sites of my protests and to film all passerby there being questioned as to their opinion of their subject matter. I hope to forestall dangerous misunderstandings and futile litigation bound to be costly and disappointing to your taxpayers by giving you this advance notice of my plan.

My protests will take place, without limitation, at the public grounds adjacent to the following institutions and residences:

1. New Enterprise Associates (NEA), [2855 Sand Hill Road, Menlo Park, CA 94025](#);
2. Cisco/WebEx, [3979 Freedom Circle, Santa Clara, CA 95054](#);
3. Silk Road Software & Services, Inc. (SRS2), [One Market Street, San Francisco, CA 94105](#);
4. Subrah and Rupar Iyar, [15292 Kennedy Rd, Unit A, Los Gatos, CA 95032](#)
5. Scott Sandell, [120 Deer Meadow Ln, Portola Valley, CA 94028](#);
6. Forest Baskett, [24 Alexander Ave, Sausalito, CA 94965](#);
7. Robert J. Garland, [636 Melville Ave, Palo Alto, CA 94301](#);
8. C. Richard Kramlich, [3699 Washington St, San Francisco, CA 94118](#);
9. Jake R. Nunn, [2120 Ashton Ave, Menlo Park, CA 94025](#);
10. Arno Allan Penzias, [19 Calle Del Mar, Stinson Beach, CA 94970](#);
11. Brooke A. Seawell, [1155 Trinity Dr, Menlo Park, CA 94025](#);
12. Peter Sonsini, [350 Olive St, Menlo Park, CA 94025](#); and
13. Sigrid Van Bladel, [1338 Masonic Ave, San Francisco, CA 94117](#).

This list will be extended and updated in future online postings and email communications. My protests will continue until I receive full satisfaction for Min Zhu's offenses against me and my family. All concerned parties may address their communications to my lawyers Michael D. Pinnisi <mpinnisi@pinnisianderson.com>, Pinnisi & Anderson, 410 East Upland Road, Ithaca, NY 14850, phone: (607) 257-8000, and David W. Affeld <dwa@agzlaw.com>, Affeld Grivakes Zucker LLP, 12400 Wilshire Boulevard, Suite 1180, Los Angeles CA 90025, phone: (310) 979-8700, fax: (310) 979-8701. I may be reached at the number listed below.



NEA: DAUGHTERFUCKERS FUNDED HERE

subrah.com

--

Michael@massmeans.com ---- <http://larvatus.livejournal.com/> ---- <http://www.subrah.com>
Zeleny@post.harvard.edu | 7576 Willow Glen Rd, Los Angeles, CA 90046 | [323.363.1860](tel:323.363.1860)

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

Tags: [america](#), [business](#), [exceptionalism](#), [laws](#), [lawyers](#), [police](#), [webex](#)

([Leave a comment](#))

[Subrah Iyar Appreciation Society](#). Powered by [LiveJournal.com](#)

Exhibit 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MATTER OF:

MICHAEL ZELENY,

Plaintiff,

vs.

EDMUND G. BROWN, JR., et al.,

Defendant.

CERTIFIED COPY

CASE NO. CV 17-7357 JCS

VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

VOLUME I

Menlo Park, California

Tuesday, March 19, 2019

Stenographically Reported by:

HEATHER J. BAUTISTA, CSR, CRR, RPR



1 VIDEOTAPED DEPOSITION of CHIEF DAVE BERTINI,
2 taken before Heather J. Bautista, CSR No. 11600, a
3 Certified Shorthand Reporter for the State of
4 California, with principal office in the County of Santa
5 Clara, commencing on Tuesday, March 19, 2019, 10:07
6 a.m., at 1100 Alma Street, Suite 210, Menlo Park,
7 California 94025.

8

9 APPEARANCES OF COUNSEL:

10

11 For the Plaintiff:

12 Affeld Grivakes LLP
13 BY: DAMION ROBINSON, ESQ.
14 2049 Century Park East
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18 dr@agzlaw.com

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For the Defendant:

17

18 Howard Rome Martin & Ridley LLP
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22 San Mateo, California 94403
23 Phone: (650) 365-7715 / Fax: (650) 364-5297
24 tmaster@hrmrlaw.com

21

22 ALSO PRESENT:

23

Nick Perry, Videographer

24

Michael Zeleny, Plaintiff

25

1 A. Are you speaking --

2 MR. MASTER: Is that a question?

3 Q. (By Mr. Robinson) I'm asking you to -- I'm

4 asking you to clarify that that's the only thing, in

11:12 5 your view, that he's done that's unsafe, as the person

6 most knowledgeable on behalf of the City of Menlo Park.

7 A. In -- when he was protesting?

8 Q. Correct.

9 A. When we speak of the broader public safety

11:12 10 realm, we are also speaking of the impact on passersby.

11 We receive numerous 9-1-1 calls and complaints about an

12 armed man standing at a corner of a street, which

13 obviously impacts public safety, it impacts our

14 resources, et cetera, and could, in fact, cause a safety

11:13 15 concern based on a driver driving by and seeing an armed

16 man.

17 Q. That's something related to Mr. Zeleny carrying

18 the unloaded weapons; right?

19 A. Yes.

11:13 20 Q. So other than Mr. Zeleny carrying unloaded

21 weapons and ammunition, is there anything else that he's

22 done that the City of Menlo Park considers unsafe?

23 MR. MASTER: I'll just object as to relevance,

24 "safety"; but vague and ambiguous.

11:13 25 You can answer.

1 under problem-solving; could have been put under other
2 parts. It's really not formal as to where it goes.

3 Q. Was Mr. Zeleny's protest considered a problem
4 by the City of Menlo Park in 2012?

15:42 5 A. Yes.

6 Q. Why was it considered a problem?

7 A. Because, as it states here, both subjects were
8 wearing military style uniforms, Level 3A tactical
9 vests, one with a ceramic trauma plate. The rifles
10 carried by the subjects were M1A type .308 caliber, and
11 they each had several loaded ten-round magazines on
12 their person but not loaded in the rifles.

13 That is why it was a problem for the Menlo Park
14 Police Department.

15:43 15 Q. What about that is a problem?

16 A. These two men were a public safety concern,
17 both because of the fact that, very easily, they could
18 load those weapons and become active shooters, number
19 one.

15:43 20 Number two, they created a visual hazard for
21 people who are passing by. And both men put themselves
22 in very dangerous, precarious positions, because if a
23 passerby saw these men in the society we live in today,
24 with active shooters and mass shootings permeating the
15:43 25 world, that a person who happened to have a gun legally

1 may consider them a threat, and who knows what could
2 have happened.

3 So, yes, this was a problem.

4 Q. At the time that the City -- in the 2012 time
15:43 5 frame, when the City of Menlo Park apparently considered
6 Mr. Zeleny's activities a problem, Mr. Zeleny was not
7 doing anything illegal; correct?

8 A. No, he was not doing anything illegal.

9 Q. He was exercising his constitutional right to
15:44 10 bear arms; true?

11 A. Certainly.

12 Q. And Mr. Zeleny's exercise of his constitutional
13 right to bear arms was a problem for the City of Menlo
14 Park?

15:44 15 MR. MASTER: Objection. Argumentative. Asked
16 and answered.

17 THE WITNESS: It caused a public safety issue.

18 Q. (By Mr. Robinson) So his exercise of his
19 constitutional right to bear arms was a problem for the
15:44 20 City of Menlo Park because, in your view, it created a
21 public safety issue; is that accurate?

22 A. That is accurate.

23 MR. ROBINSON: Let's take a look at Exhibit 49.

24 (Exhibit 49 was marked for identification.)

15:46 25 Q. (By Mr. Robinson) Do you recognize Exhibit 49?

1 I, HEATHER J. BAUTISTA, CSR No. 11600, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken before
4 me at the time and place therein set forth, at which
5 time the witness declared under penalty of perjury; that
6 the testimony of the witness and all objections made at
7 the time of the examination were recorded
8 stenographically by me and were thereafter transcribed
9 under my direction and supervision;

10 That the foregoing is a full, true, and correct
11 transcript of my shorthand notes so taken and of the
12 testimony so given;

13 () Reading and signing was requested.

14 () Reading and signing was waived.

15 (XX) Reading and signing was not requested.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties, nor of any of
19 the parties.

20 I declare under penalty of perjury under the laws
21 of California that the foregoing is true and correct.

22 Dated: March 31, 2019

23

24

25



HEATHER J. BAUTISTA, CSR, CRR, RPR, CLR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

MICHAEL ZELENY,

Plaintiff,

vs.

Case No. CV 17-7357 JCS

GAVIN NEWSOM, et al.,

Defendants.

_____/

Pages 278 - 286 ARE CONFIDENTIAL

AND BOUND SEPARATELY

Pages 310 - 324 ARE CONFIDENTIAL

AND BOUND SEPARATELY

CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

BY VIDEOCONFERENCE

(Volume II - Pages 229 to 534

Taken before DENISE M. LOMBARDO, CSR No. 5419

RPR, RMR, RDR, CRR

August 7, 2020

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I N D E X

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WHEREUPON, THE DEPONENT WAS INSTRUCTED NOT TO ANSWER
THE FOLLOWING QUESTIONS:

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4		Event Application, Bates	
5	Exhibit 251	No. MP 1938 through MP 1950	
6		Defendant Dave Bertini's	260
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8		to Plaintiff's Interrogatories	
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10		State Highway in the City of	
11		Menlo Park, Bates No. MP 6656	
12		through MP 6673	
13	Exhibit 253	Test messages, Bates No. MP	269
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15	Exhibit 254	Menlo Park Police Department	287
16		letter dated January 1, 2010,	
17		Bates No. MP 5382 through MP	
18		5388	
19	Exhibit 255	E-mail correspondence, Bates	298
20		No. MP 51 through MP 52	
21	Exhibit 256	E-mail correspondence, Bates	301
22		No. MP 5380 through MP 5381	
23	Exhibit 257	(Confidential document)	---
24	Exhibit 258	Menlo Park Police Department	345
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		through MP 5096	
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7	Exhibit 264	Menlo Park Police Department Agenda Items, September 2, 2015, Bates No. 5326 through MP 5337	405
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10	Exhibit 265	E-mail correspondence, Bates No. 345 through MP 350	411
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21	Exhibit 272	E-mail correspondence, Bates No. MP 1290 through MP 1299	501
22	Exhibit 273	E-mail correspondence, Bates No. 1415 through MP1426	507
23			
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25			

1 CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

2
3 BE IT REMEMBERED, that pursuant to Notice, and on
4 the 7th day of August 2020, commencing at the hour of
5 10:05 a.m., before me, DENISE M. LOMBARDO, a Certified
6 Shorthand Reporter, appeared by videoconference CHIEF
7 DAVE BERTINI, produced as a witness in said action, and
8 being by me first duly sworn, was thereupon examined as
9 a witness in said cause.

10
11 ---o0o---

12 APPEARANCES:

13
14 Appearing on behalf of the Plaintiff:

15 DAMION ROBINSON (by Zoom)

16 DAVID MARKEVITCH (by Zoom)

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20 (310) 979-8700
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22
23
24
25

1 Appearing on behalf of the Defendant City of Menlo Park;
2 and the Deponent, Chief Dave Bertini:

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8 tmaster@hrmrlaw.com
9

10 Appearing on behalf of the Defendant Attorney General
11 Xavier Becerra:

12 JOHN W. KILLEEN (by Zoom)
13 Deputy Attorney General
14 Office of the Attorney General
15 (916) 210-6045
16 john.killeen@doj.ca.gov
17

18 ALSO PRESENT:

19 Ted Hoppe, Videographer (by Zoom)
20 Veritext Legal Solutions
21

22 Michael Zeleny (by Zoom)
23
24
25

1 And Sergeant Kaufman sent an e-mail that was
2 forwarded to me, via the chief, to bring me up to
3 speed about what his -- what Mr. Zeleny's
4 activities were prior to me being employed.

5 Q. How did he describe Mr. Zeleny's 11:53
6 activities?

7 A. How did Chief Roberts describe it?

8 Q. Correct.

9 A. He just -- he gave me a background of the
10 fact that Mr. Zeleny would come to protest a 11:53
11 company called NEA, which I had never heard of
12 before, and that in the past, he had actually gone
13 on the property with weapons and caused quite a
14 disturbance and that since that time, there had
15 been some kind of either stay-away order or a 11:54
16 trespass order instructing him to stay off the
17 property and that he continued his protest on the
18 public right-of-way.

19 Q. Did you have any understanding or did you
20 ever develop an understanding of what Chief Roberts 11:54
21 meant by "It's very touchy and political"?

22 A. All I could -- no. The only thing that he
23 spoke about is the fact that whenever Mr. Zeleny
24 appeared with all his weapons, we would be
25 inundated with phone calls, both by residents but 11:54

1 also by the companies and the organizations and the
2 entities that were in that shopping -- or that --
3 that's not a shopping center -- in that complex.

4 Q. Sir, you said something to the effect that
5 the department would be inundated with phone calls; 11:55
6 right?

7 A. He said in the past, they had been
8 inundated with phone calls, yes.

9 Q. Did the department stop being inundated
10 with phone calls after you started? 11:55

11 A. As I told you, there were phone calls. I
12 could not estimate how many were received for each
13 instance that he showed up.

14 Q. And beyond the effect on the police
15 department and the level of calls, did he say 11:55
16 anything else about why the situation was touchy
17 and political?

18 A. No.

19 Q. Do you see the handwriting on Exhibit 256?

20 A. I do. 11:55

21 Q. Do you know whose handwriting that is?

22 A. That's mine.

23 Q. The top note here says, "NEA Rosewood."
24 Do you see that?

25 A. No. It says, "Near Rosewood." That's my 11:55

1 handwriting.

2 Q. Near Rosewood?

3 A. Correct.

4 Q. Got it. What does the handwriting at the

5 bottom say?

11:56

6 A. "Special operations" I think I wrote.

7 Q. Separate from any discussion -- strike

8 that.

9 After Chief Roberts sent you this e-mail,

10 did you speak to Sergeant Kaufman or Sergeant

11:56

11 Romero about Michael Zeleny?

12 A. Yes.

13 Q. What did you talk about?

14 A. Again, they were bringing me up to speed.

15 I was brand-new as a commander. I had never heard

11:56

16 of Michael Zeleny nor NEA nor any of these issues

17 in the past. So they were just basically bringing

18 me up to speed about what has happened in the past

19 and what our response would normally be so that I

20 would have some historical perspective about how

11:57

21 the police department handled these in the past.

22 Q. There was a period of time when you were a

23 commander and Zeleny continued to protest; right?

24 A. (No response.)

25 Q. Let me rephrase that a little bit.

11:57

1 Mr. Zeleny continued protesting at NEA
2 after you became employed with the City of Menlo
3 Park; right?

4 A. That's correct.

5 Q. During that time period, he continued to 11:57
6 protest with unloaded firearms; right?

7 A. Yes.

8 Q. Did you wish that he would stop
9 protesting?

10 A. I had no personal opinion, other than as a 11:57
11 police commander, my concern is resources, public
12 safety and having to deal with folks who are
13 calling the police department saying, There's an
14 armed person, why aren't you doing anything about
15 this. There were several calls of that nature. So 11:58
16 it was something we had to deal with.

17 Q. Those were negative factors in terms of
18 managing the police department; right? The drain
19 on resources, inundation with calls, those weren't
20 good things; were they? 11:58

21 MR. MASTER: Objection. Vague and
22 ambiguous. Overbroad.

23 MR. ROBINSON: You can answer.

24 THE WITNESS: I'm not quite sure what
25 you're getting at. But this is part of our job. 11:58

1 We have to deal with this. Now, obviously, it
2 would be easier from a resource perspective that if
3 he wasn't there with guns, those resources could be
4 used somewhere else.

5 BY MR. ROBINSON: 11:58

6 Q. As a police commander, were you glad that
7 Michael Zeleny was using up the resources of the
8 department?

9 MR. MASTER: Objection. Vague and
10 ambiguous. Overbroad. 11:58

11 THE WITNESS: Was I happy and glad? Is
12 that what you're asking me?

13 MR. ROBINSON: Correct.

14 THE WITNESS: No.

15 BY MR. ROBINSON: 11:59

16 Q. Okay. So it wasn't good for the
17 department that Mr. Zeleny was using up resources
18 for his protests; was it?

19 A. Again, this is -- this is what the police
20 department is there for. I'm not sure what exactly 11:59
21 you are asking. You know, we have to give up
22 resources for all -- a myriad of calls, and this is
23 just one of them.

24 Q. How about being inundated with calls; were
25 you happy or glad that the police department was 11:59

REPORTER'S CERTIFICATE

I, DENISE M. LOMBARDO, do hereby certify:

That DAVE BERTINI, in the foregoing deposition named, was present by videoconference and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

And that the aforementioned 306-page transcript meets the California minimum transcript format standards.

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 3rd day of September, 2020.

Denise M. Lombardo

DENISE M. LOMBARDO, CSR No. 5419
State of California

Exhibit 7



Michael Zeleny <larvatus@gmail.com>

Special Event Permit Application

Michael Zeleny <zeleny@post.harvard.edu>

Fri, Jul 10, 2015 at 11:04 AM

To: "McClure, William" <wlm@jsmf.com>, Scott Sandell <ssandell@nea.com>, mlmilde@menlopark.org, Bruce Goitia <policechief@menlopark.org>

Cc: "David W. Affeld" <dwa@agzlaw.com>, Peter Shimamoto <ps@agzlaw.com>

Michael Zeleny
michael@massmeans.com
zeleny@post.harvard.edu
7576 Willow Glen Road, Los Angeles, CA 90046
voice:323.363.1860
fax:323.410.2373

City of Menlo Park
Matt Milde
Recreation Program Coordinator
mlmilde@menlopark.org
701 Laurel Street
Menlo Park, CA 94025
voice:650.330.2223
fax:650.330.2242

By email, fax, and postal mail.

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu, and continuing until NEA publicly acknowledges its wrongdoing and severs its relationship with Min Zhu, Scott Sandell, and Dick Kramlich. I shall be present on site around the clock, served by support staff and equipped with fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed Browning M1919a4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/371973.html>. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z/>. My display will be confined to the median strip on Sand Hill Road directly across the NEA headquarters. No obstruction of automotive or foot traffic will take place. Please contact me to arrange for the payment of the special event fee and discuss any organizational matters. Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes Zucker LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice:310.979.8700, fax:310.979.8701.

cc:

Bill McClure
Menlo Park City Attorney
wlm@jsmf.com voice:650-330-6610
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
voice:650.324.9300
fax:650.324.0227

Robert Jonsen
Menlo Park Police Chief
policechief@menlopark.org
701 Laurel St.

ZEL 0181

Menlo Park, CA 94025
voice:650.330.6600

Scott Sandell
New Enterprise Associates
ssandell@nea.com
2855 Sand Hill Road
Menlo Park, CA 94025
United States
voice:650.854.9499
fax:650.854.9397

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles, CA 90046 |
voice:323.363.1860 | fax:323.410.2373
<http://larvatus.livejournal.com> | "All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail
better." — Samuel Beckett



Special Event Permits - Completed Application - signed.pdf
400K

Exhibit 8

From: larvatus@gmail.com on behalf of Michael Zeleny
To: [McClure, William](#); [Scott Sandell](#); [Milde, Matt L](#); [Police Chief](#)
Cc: [David W. Affeld](#); [Peter Shimamoto](#)
Subject: Special Event Permit Application
Date: Friday, July 10, 2015 11:05:37 AM
Attachments: [Special Event Permits - Completed Application - signed.pdf](#)

Michael Zeleny
michael@massmeans.com
zeleny@post.harvard.edu
7576 Willow Glen Road, Los Angeles, CA 90046
voice:[323.363.1860](tel:323.363.1860)
fax:[323.410.2373](tel:323.410.2373)

City of Menlo Park
Matt Milde
Recreation Program Coordinator
mlmilde@menlopark.org
701 Laurel Street
Menlo Park, CA 94025
voice:[650.330.2223](tel:650.330.2223)
fax:[650.330.2242](tel:650.330.2242)

By email, fax, and postal mail.

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu, and continuing until NEA publicly acknowledges its wrongdoing and severs its relationship with Min Zhu, Scott Sandell, and Dick Kramlich. I shall be present on site around the clock, served by support staff and equipped with fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed Browning M1919a4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/371973.html>. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z/>. My display will be confined to the median strip on Sand Hill Road directly across the NEA headquarters. No obstruction of automotive or foot traffic will take place. Please contact me to arrange for the payment of the special event fee and discuss any organizational matters. Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes Zucker LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice:[310.979.8700](tel:310.979.8700), fax:[310.979.8701](tel:310.979.8701).

cc:

Bill McClure
Menlo Park City Attorney
wlm@jsmf.com voice: [650-330-6610](tel:650-330-6610)
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
voice: [650.324.9300](tel:650.324.9300)
fax: [650.324.0227](tel:650.324.0227)

Robert Jonsen
Menlo Park Police Chief
policechief@menlopark.org
701 Laurel St.
Menlo Park, CA 94025
voice: [650.330.6600](tel:650.330.6600)

Scott Sandell
New Enterprise Associates
ssandell@nea.com
2855 Sand Hill Road
Menlo Park, CA 94025
United States
voice: [650.854.9499](tel:650.854.9499)
fax: [650.854.9397](tel:650.854.9397)

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles, CA 90046 | voice: 323.363.1860 | fax: 323.410.2373
<http://larvatus.livejournal.com> | “All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail better.” — Samuel Beckett



CITY OF MENLO PARK

Special Event Application

701 Laurel Street, Menlo Park, CA 94025 Ph: 650-330-2223 Fax: 650-330-2242

Applicant Name: Michael Zeleny					
Organization Name: Mass Means, Inc.					
Name of Event: Child Rape Tools					
Address: 7576 Willow Glen Rd		City: Los Angeles		State: CA	Zip: 90046
Home Phone: 323-363-1860		Alternate Phone: none			
E-mail Address: zeleny@post.harvard.edu		Fax: 323-410-2373			
Estimated Attendance: drive-by only		Event open the public: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Number of Event Staff: 1		Number of Event Volunteers: 5			
Purpose of Event: Outing New Enterprise Associates as the corporate sponsors of incestuous child rapist Min Zhu.					
Location of Event (please be specific and attach map): 2825 Sand Hill Rd, Menlo Park, CA 94025, at the median strip, per the attached.					
Event Timeline	Day	Date	Start Time	End Time	Total Hours
Set up/Preparation	Wed	9/30/2015	9 a.m.	10 p.m.	13 hours
Special Event	Thu	10/1/2015	7 a.m.	ongoing	indefinite
Tear down/Clean up					
Do you plan to use a City building or park? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Do you plan to use Private Property: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		If yes, do you have written approval from Private Property owner: Yes <input type="checkbox"/> No <input type="checkbox"/>	
City Facility Reservation Permit Included: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Pending <input type="checkbox"/>		If yes, provide address of location:			
Any City streets closed? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Any sidewalks blocked? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Traffic Control Plan Included: Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Name of streets:					
Renting barricades from City: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Park sprinklers turned off: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Amplified sound (i.e. Music, PA system): Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Time of use: 7 a.m. to 9 p.m.					
Temporary lighting: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Please describe: Portable spotlights focused on display.					
Charge for event: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> \$_____/person			Event is reoccurring more than annually?: Yes <input type="checkbox"/> No <input type="checkbox"/>		
Is this event a fundraiser: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Proof of 501c3: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Will alcohol be served: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			ABC Permit Attached: Yes <input type="checkbox"/> No <input type="checkbox"/> Pending <input type="checkbox"/>		
Will you be selling alcohol: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>					
Will food be served: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			I will apply for San Mateo County Temporary Event Food Permit: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Pending <input type="checkbox"/>		
Will you be selling food: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>					
Selling any other items: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			Menlo Park Business License: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Describe:					
Will portable rest rooms be provided: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			No. of portable toilets <u>1</u> No. of ADA compliant portable toilets <u>0</u>		
Will you be using a tent, canopy, or other temporary structure? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			Please describe: Canopy to be erected at the median strip of Sand Hill Rd. MP000236		

SECTION 2: EVENT NARRATIVE

Event Description

Briefly provide a description of the event, including activities, timeline, and sequence of events:

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu. I shall be present on site around the clock, equipped with fully operational, exposed and unloaded firearms and loaded ammunition feeding devices therefor, in full compliance with all applicable laws. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities.

Parking

Describe where event participants are expected to park their vehicles:

Off-site parking only; all on-site transportation to be provided to drop off and pick up the participants.

Security / Emergency Action Plan

Describe the security plan, including crowd control (including the security company name, contact information, and the amount of security personnel):

No need for crowd control is anticipated, owing to the lack of sidewalks and no stopping allowed on the Sand Hill roadside. Participant assumes full personal responsibility for the lawful defense of the site.

Americans with Disabilities (ADA) compliance

Describe how the event will be accessible to people with disabilities (such as parking, restrooms, and accessible path of travel to all event functions):

N/A.

Recyclables and garbage handling

Describe the plan for cleanup and removal of recyclable goods and garbage during and after the event (include if additional street sweeping will be arranged).

All garbage generated by the event will be picked up promptly and removed from the site daily for sanitary and lawful disposal.

Please note: For larger events where additional garbage removal will be needed, please contact Recology at www.recologysanmateocounty.com or call (650) 595-3900. Failure to remove trash from event will result in a \$250 fine.

SECTION 3: SITE MAP CHECKLIST

Please provide a detailed site plan/route map of the event on a separate sheet. If site map is larger than 11x17 size paper, please provide SIX (6) copies of this map in application packet. The map should include the following information:

- | Yes | N/A | |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Outline of event site, including names of streets or areas that are a part of the venue and surrounding area. If the event includes a moving route (i.e. parade or run), indicate the direction of travel and start/finish locations. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Any street or lane closures |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | The locations of fencing, barriers or barricades. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Location of first-aid facilities |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of all stages, platforms, booths, food areas, trash containers, tents, etc (include dimensions) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Generator locations and/or source of electricity |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Placement of vehicles or trailers used for the event (include dimensions) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Anticipated parking locations and number of parking (include ADA parking) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Placement of promotional signs or banners |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Placement of portable restrooms (including labeling ADA restrooms) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Exit locations for events with fences |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of all event activities |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of temporary lighting |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Location of sound system |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fire truck access to existing building/structures shall remain clear and unobstructed (20 feet minimum) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Fire equipment shall remain clear and unobstructed (25 feet minimum) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | For large event, traffic impact and traffic handling plan including re-routing of vehicles, bicycles, and pedestrians. |

Note: Incomplete and vague site maps will delay the permit process.

SECTION 4: INSURANCE INFORMATION

A Certificate of Liability Insurance must be provided and must contain the following:

- The special event permit name must be listed as the one "insured."
- The policy must not expire before the planned event date.
- The policy must be for a minimum of \$1,000,000 unless otherwise specified.
- The "description" should list the rental location, day, and event planned.
- The City of Menlo Park at 701 Laurel Street, Menlo Park, CA 94025 must be noted as "additional insured."

A special event permit will not be issued until the required application fees, insurance, and other supplementary materials, as indicated in the Special Event Application, have been received. A special event permit issued for a private function on private property is not required to submit proof of liability insurance to the City.

SECTION 5: PUBLIC NOTIFICATION

Public Notification will be required for some permits based on your application. If noise ordinance is exceeded, the Planning Division will prepare a public notice to be mailed to all property owners, residents, and businesses within 300 feet of the subject property. The notice will state the decision of the City and will serve as the noise permit unless the request is appealed. The Planning Division will mail the notices on the decision date, which starts the 10-day appeal period. If the Planning Division does not receive an appeal in writing, the decision will become effective on the 11th day. If the decision is appealed, the item will be scheduled for the next available Planning Commission meeting. The Planning Commission generally meets on the first and third Mondays of every month. The minimum lead-time between an appeal and a Planning Commission meeting is approximately 3-weeks. The decision will also be posted at the Civic Center and on the City's web page: www.menlopark.org.

SECTION 6: FIRE DISTRICT NOTIFICATION

If necessary, you will be asked to seek approval of the Menlo Park Fire Protection District. They will be informed of any street closures and other impacts to emergency services. Please keep in mind that there are several streets within Menlo Park that cannot be closed because they are deemed primary response routes. You must receive Conditional of Approval from the City prior to contacting the Fire District.

SECTION 7: POLICE STAFFING

For events requiring Police assistance, the Police Department will review the application and be involved in the initial meeting with the applicant. Based on the details for the event, the Police Department will provide an estimate of costs based on the number of officers needed and hours needed at the event (payment of 50% of estimated Police services is due before your permit can be issued). Post event, an invoice will be provided by the to the applicant for Police services (based on incurred costs, minus any pre-paid amount). Any additional costs incurred that were not anticipated such as extra staffing or longer hours will be billed to the applicant. All payments are due to the Menlo Park Police Department by contacting Sgt. Matt Ortega at (650) 330-6347. Non-payment for Police assistance after the event will result in the inability to apply for a special event permit in the future, until any balance is paid in full.

SECTION 8: PARK USAGE

Rental fees for special events held on city parkland, picnic areas, or tennis courts may be applied and are subject to availability. Please review the city's Master Fee Schedule for current park usage fees. Additionally, the organizing party of an event held in these areas is responsible for following all park rules, usage guidelines, and city ordinances. Sharon Park is reserved for weddings only.

SECTION 9: SOUND

Approval of a Special Event permit does not necessarily exempt the planned event from the requirements of Chapter 8.06 (Noise) of the Menlo Park Municipal Code. All sources of sound measured from any residential property shall not exceed 50 dBA during the "Nighttime" hours, or 60 dBA during the "Daytime" hours. Nighttime hours are considered the period between 10 p.m. and 7 a.m. daily. If you believe your planned event could exceed the noise limitations set by Chapter 8.06 of the Municipal Code, please discuss the noise permitting requirements with a member of the Planning Division. A noise permit can be obtained as part of the Special Events permit application, subject to review and action by the Planning Division and the public notification and appeal process set forth in Section 5. The Planning Division can be reached at (650) 330-6702 or by email at planning@menlopark.org.

SECTION 10: CONFIRMATION

Please check all that apply:

- ☒ I have read all policies regarding the Special Event Application process.
- ☒ I have reviewed the Special Event Permit FAQs.
- ☒ I have read and will abide by all Sections as written and described herein.
- ☒ I am submitting the most current version of the Special Event Permit Application found at: www.menlopark.org/eventpermits
- ☒ I am providing the correct payment with my application.
- ☒ I have filled out all portions of this application completely and to the best of my knowledge.

I hereby certify and agree that I shall be personally responsible on behalf of myself/organization for any damage sustained by the facility, property, or equipment, as a result of the occupancy of said facility or property by my group/organization. I hereby waive, release, discharge and agree to indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any and all claims by any person or entity, demands, causes of action or judgments for personal injury, death, damage or loss of property, or any other damage and/or liability occasioned by, arising out of out of the event for the actions (active or passive) of invitees', event participants, event sponsors, and event spectators while on the property, or resulting from this reservation of the facilities or use or property. I hereby declare that I have read and understand and agree to abide by and to enforce the rules, regulations, and policies affecting the use of the facilities or property. If any portion of the Special Event is held on non-city owned property I have included letters of approval for each respective property owner.

 10 July 2015
 Signature of Applicant Date

Payment Information:

☐ Cash ☒ Check ☐ Visa ☐ Mastercard Amount \$250 (\$125 minor / \$250 major)
 Account # _____ Exp. _____ Account Holder Name _____
 I agree to pay the above charges and authorize the City of Menlo Park to charge these costs to my credit card. Checks payable to: City of Menlo Park.
 Authorized Signature: _____

Note: There is a \$30 charge for returned checks. Additional fees from other city departments may be required before permit maybe issued, please refer to the Master Fee Schedule for updates on current fees.

Office Use Only:

Date Permit Submitted: _____ Project No. _____
 Permit Payment: \$ _____ Date _____ Processed By _____

Approval:	Department	Received	Fee	Paid	Signature	Date
	Police	_____	(50% Est.)	<input type="checkbox"/>	_____	_____
	Planning	_____	_____	<input type="checkbox"/>	_____	_____
	Public Works Engineering	_____	_____	<input type="checkbox"/>	_____	_____
	Public Works Maintenance	_____	_____	<input type="checkbox"/>	_____	_____
	CSD/Recreation	_____	_____	<input type="checkbox"/>	_____	_____
REQUIRED:						
Yes <input type="checkbox"/> No <input type="checkbox"/>	Fire District	_____	_____	<input type="checkbox"/>	_____	_____

Event Permit Coordinator:

- ☐ Application Initial Review Complete
- ☐ E-mail Acknowledgement Sent to Applicant (Date: _____)
- ☐ Application Sent to Permit Committee
- ☐ Site Map Complete
- ☐ Insurance Certificate Provided
- ☐ Other Agencies Permits Included
- ☐ Public Notification Complete
- ☐ Approved to exceed noise ordinance: ☐ Yes ☐ No
- ☐ Staff Approvals Complete
- ☐ Traffic Control Plan Approved (Street closures only)
- ☐ Conditions-of-Approval or Denial Letter Sent (Date: _____)
- ☐ Other Department Fees Paid
- ☐ Barricade Rental Information (Requesting _____ 3' barricades and _____ 12' barricades)
- ☐ Final Copies Sent to Approving Staff

Special Event Permit Application Approval:

 Signature of Permit Coordinator Date

Updated: 07/24/14

MP000240

Exhibit 9

mass means

Michael Zeleny <michael@massmeans.com>

MP/ Zeleny Permit

Michael Zeleny <michael@massmeans.com>

To: "William L. McClure" <wlm@jsmf.com>, "Robin H. Riggins" <rrh@jsmf.com>, Cherise Brandell <cebrandell@menlopark.org>

Cc: "Cindy S. Elmquist" <cse@jsmf.com>, "David C. Bertini" <dcbertini@menlopark.org>, "Matt L. Milde" <mlmilde@menlopark.org>, Scott Sandell <ssandell@nea.com>, Subrah Iyar <Subrah.I@dkramlich@nea.com>, "David W. Affeld" <dwa@agglaw.com>, Dan Primack <danielprimack@gmail.com>, Louis Citron <lcitron@nea.com>, Forest Baskett <fbaskett@nea.com>, Brooke Seaw Sonsini <psonsini@nea.com>, Robert Garland <rgarland@nea.com>, Jake Nunn <jnunn@nea.com>, "Hawk, Robert B." <robert.hawk@hoganlovells.com>, Arno Penzias <apenzias@nea.com>
Bcc: p.mitchell@helicalplane.com, chienlingliu@ucla.edu

Dear Mr McClure,

I have received your second denial, dated 4 May 2016, of my amended application for a special event permit, submitted on 15 April 2016. My second appeal follows.

With respect to your complaint regarding my application being incomplete, please refer to the map I submitted with it, as reattached below for your convenience. The red rectangle that designates the location of my Dodge Ram SRT-10 pickup truck. All my activities and all my equipment will be confined to its bed and cabin, as driven to and parked at the presentation will be made with a 55" SunBrite outdoor TV, mounted in a Gator G-Tour E-Lift, and powered by a portable generator. As stated in my original application dated 28 July 2015, I will until NEA publicly acknowledges its wrongdoing and severs all its relations with Min Zhu, Scott Sandell, and Dick Kramlich. My staff will attend to all my needs with daily deliveries, in full compliance with regulations.

My event is most certainly meant to be open to the community at large, and I will make every accommodation for all passerby to engage lawfully and safely with its content and its authors. With accommodations will include distribution of flyers and souvenirs, and opportunities to engage me in real-time discussion, broadcast via a live Internet linkage.

If the foregoing explanation satisfies your concerns, I will forgo carrying of loaded weapons in the spirit of compromise. However, if you continue to object to my carrying unloaded firearms in the event, I shall be happy to litigate the matter of loaded open carry within the scope of Constitutionally protected speech. Your citation of Penal Code §16840 providing that "a firearm shall be deemed to be in the immediate possession of the same person", is inapposite, because applicable solely to "[e]very person who carries a firearm with the intent to commit a felony" within the scope of Penal Code §25800. I assure you that I have no such intent.

Lastly, I do not understand your claim that "a practical reading of the entertainment exception would require the Department of Justice or the Menlo Park Police Department to authorize [my] event." Constitutionally protected speech stands in need of such authorization, as explained previously, I shall be happy to settle this matter within the scope of a civil action for deprivation of rights pursuant to 42 U.S.C. §1983. Indeed, if you compel me to do so, the venue of my performance will merely change, from Sand Hill Road, to a Federal courthouse. One way or another, my message will resonate with its intended audience.

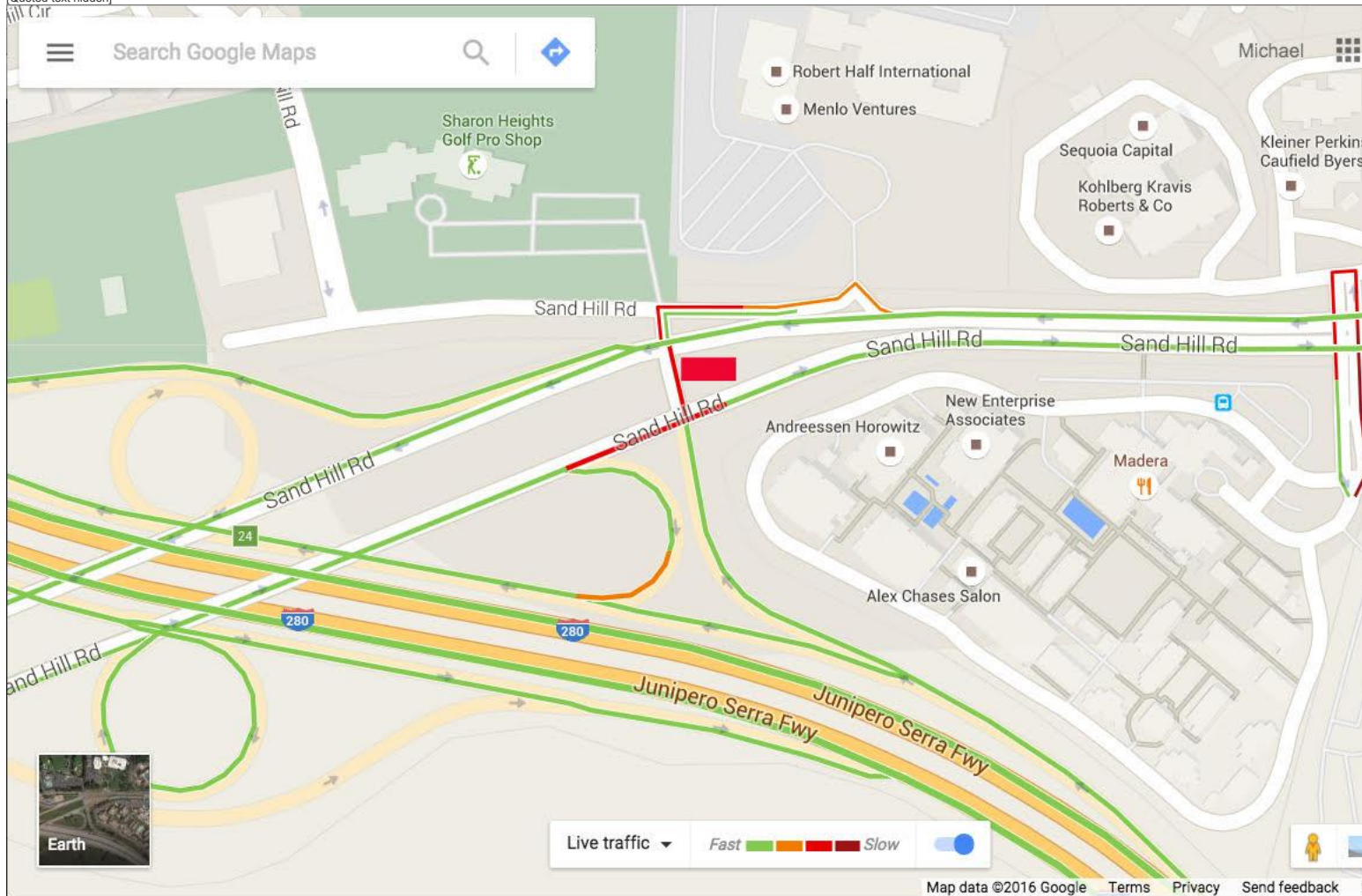
I trust that I have answered all relevant questions and addressed all legitimate concerns. I hope that no further explanations will be necessary for you to make a final disposition of my application.

Michael@massmeans.com Zeleny@post.harvard.edu | larvatus.livejournal.com | subrah.com

7576 Willow Glen Rd, Los Angeles, CA 90046, U.S.A. | voice:323.363.1860 | fax:323.410.2373

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

[Quoted text hidden]



ZEL 0167

Exhibit 10

Atkinson-Baker, Inc.
www.depo.com

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL ZELENY, an individual,)
)
Plaintiff,)
) No. 3:17-cv-07357 RS
vs.)
)
GAVIN NEWSOM, an individual,)
in his official capacity;)
XAVIER BECERRA, an individual,)
in his official capacity;)
CITY OF MENLO PARK, a municipal)
corporation; and DAVE BERTINI,)
in his official capacity,)
)
Defendants.)
_____)

CERTIFIED COPY

VIDEOTAPED DEPOSITION OF
DAVID HARDY
TUCSON, ARIZONA
FRIDAY, NOVEMBER 20, 2020

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REPORTED BY: PAMELA J. MONCADA, CSR NO. 7739
FILE NO. AE081FA

David Hardy
November 20, 2020

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE STATE OF CALIFORNIA

3 SAN FRANCISCO DIVISION

4
5 MICHAEL ZELENY, an individual,)

6 Plaintiff,)

7 vs.)

No. 3:17-cv-07357 RS

8 GAVIN NEWSOM, an individual,)

in his official capacity;)

9 XAVIER BECERRA, an individual,)

in his official capacity;)

10 CITY OF MENLO PARK, a municipal)

corporation; and DAVE BERTINI,)

11 in his official capacity,)

12 Defendants.)

13 _____)

14
15 Videotaped deposition of DAVID HARDY, taken on
16 behalf of Defendants, at Tucson, Arizona, commencing at
17 9:05 a.m., Friday, November 20, 2020, before Pamela
18 Moncada, CSR No. 7739.

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20
21
22
23
24
25
David Hardy
November 20, 2020

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A P P E A R A N C E S:

FOR PLAINTIFF:

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FOR DEFENDANTS CITY OF MENLO PARK AND DAVE BERTINI:

LAW OFFICES OF HOWARD, ROME, MARTIN & RIDLEY, LLP
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ALSO PRESENT: JOSHUA DANIELS - VIDEOGRAPHER

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1 over.

11:41AM

2 So in this section you describe three specific
3 sources of authority. You refer to Professor Nicholas
4 Johnson's book, you refer to the book by Mr. Cobb, and
5 you refer to your conversations with Professor Olson.

11:41AM

11:42AM

11:42AM

11:42AM

6 Other than the book by Mr. Johnson, the book by
7 Mr. Cobb, and your conversations with Professor Olson,
8 are there any other materials that you have relied on in
9 forming the opinions in Paragraphs 28 through 33?

11:42AM

11:42AM

11:42AM

11:42AM

10 A. One that I would have, my documentary also
11 interviewed Don Kates, K-a-t-e-s, who was also involved
12 in the Civil Rights movement and was armed.

11:42AM

11:42AM

11:42AM

13 Q. And did you consult with Mr. Kates about that
14 in preparing this Declaration?

11:43AM

11:43AM

15 A. I should have said the late Don Kates. I would
16 have had no chance to interview him in preparing this
17 Declaration.

11:43AM

11:43AM

11:43AM

18 Q. Fair enough.

11:43AM

19 So in your mind, you rely on the content of
20 that documentary as the basis for forming the opinions
21 that you express in Paragraphs 28 through 33?

11:43AM

11:43AM

11:43AM

22 A. Yes.

11:43AM

23 Q. Mr. Hardy, is it your understanding that those
24 who carried weapons during civil rights protests
25 generally carried loaded weapons, or were they generally

11:43AM

11:43AM

11:43AM

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1	carrying unloaded weapons?	11:43AM
2	MR. ENGLAND: Object to the form.	11:43AM
3	THE WITNESS: No one has specified it to me,	11:43AM
4	but I'm pretty sure they were carrying loaded ones.	11:43AM
5	BY MR. KILLEEN:	11:44AM
6	Q. Right. So for example, in Paragraph 28, you	11:44AM
7	describe, quote, "Armed volunteers protecting Dr. Martin	11:44AM
8	Luther King."	11:44AM
9	Do you understand those volunteers to have been	11:44AM
10	carrying loaded weapons or unloaded ones?	11:44AM
11	A. I'm assuming loaded.	11:44AM
12	Q. That was assuming loaded?	11:44AM
13	A. Yes.	11:44AM
14	Q. All right.	11:44AM
15	And similarly, the Deacons for Defense, would	11:44AM
16	you assume that their weapons would have been loaded, as	11:44AM
17	well?	11:44AM
18	A. Yes. On one occasion they fired it on	11:44AM
19	Klansmen; so it's safe to say their weapons were loaded.	11:44AM
20	Q. And in your conversations with Professor Olson,	11:44AM
21	did he convey to you that his fellow workers had loaded	11:44AM
22	weapons or unloaded weapons, generally speaking?	11:44AM
23	A. I didn't ask him. But the context was such	11:44AM
24	that it would have been loaded.	11:45AM
25	Q. Outside of the civil rights -- scratch that.	11:45AM

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1 Are you aware of any history in this country of 11:45AM
2 people carrying unloaded firearms while participating in 11:45AM
3 peaceful protests? 11:45AM

4 A. I cannot think of any. 11:45AM

5 Q. And outside of the civil rights movement in the 11:45AM
6 south, so in other parts of the country, maybe other 11:45AM
7 times in the nation's history, are you aware of a 11:45AM
8 history or tradition of carrying firearms while 11:45AM
9 participating in peaceful protests? 11:45AM

10 And I'm talking about either loaded or 11:45AM
11 unloaded. 11:45AM

12 MR. ENGLAND: Object to form. 11:45AM

13 THE WITNESS: It's sort of hard to come up with 11:46AM
14 the idea of peaceful protests until really the time of 11:46AM
15 Martin Luther King. I'm sure there were some. But in 11:46AM
16 the old days you might put up a liberty pole in your 11:46AM
17 front yard or something like that, or go to the extreme 11:46AM
18 of making it very much not non-violent. But I don't 11:46AM
19 think there was a whole lot of peaceful protests up 11:46AM
20 until the 1960s; so I'm not familiar with carrying 11:46AM
21 firearms in a peaceful protest for that time, no. 11:46AM

22 BY MR. KILLEEN: 11:46AM

23 Q. All right. 11:46AM

24 And going back to the civil rights movement 11:46AM

25 that is the subject of your Declaration, are you aware 11:46AM

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1 of any instances when civil rights protestors would have 11:46AM
2 deliberately carried only unloaded weapons to amplify 11:47AM
3 their protests? 11:47AM

4 MR. ENGLAND: Object to the form. 11:47AM

5 THE WITNESS: No. 11:47AM

6 MR. KILLEEN: All right. Well, Brian, I'm just 11:47AM
7 about done; so maybe we should go off the record for 11:47AM
8 three minutes. And I'll check my transcript, and then 11:47AM
9 turn it over to Bob for any questions, or if you have 11:47AM
10 any questions? 11:47AM

11 MR. ENGLAND: That's fine with me. 11:47AM

12 Bob, do you have an estimate of time you'll 11:47AM
13 need? 11:47AM

14 MR. GUNDERT: It depends in part of what he 11:47AM
15 says. But it could be as little as 10 minutes and it 11:47AM
16 could be at most probably not even an hour. 11:47AM

17 MR. ENGLAND: Okay. Let's take a five-minute 11:47AM
18 break or 10 minutes now and we will come back. 11:47AM

19 MR. KILLEEN: All right. Ten minutes. 11:47AM

20 THE VIDEOGRAPHER: This marks the end of Media 11:47AM
21 No. 1. The time is 11:48 a.m. We are off the record. 11:47AM

22 (A recess was taken.) 11:51AM

23 THE VIDEOGRAPHER: This marks the beginning of 11:59AM
24 Media No. 2 in the deposition of David Hardy. The time 11:59AM
25 is 11:59 a.m. We are back on the record. 11:59AM

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REPORTER'S CERTIFICATE

I, PAMELA J. MONCADA, CSR No. 7739, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken by me
and was held via videoconferencing equipment; the
witness and the reporter were not in the same room, at
which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
Stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
Interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

Dated this 20th day of November, 2020.


PAMELA J. MONCADA, CSR No. 7739

SIGNATURE WAS REQUESTED

Exhibit 11

1 David W. Affeld, State Bar No. 123922
2 Brian R. England, State Bar No. 211355
3 Damion Robinson, State Bar No. 262573
4 Affeld Grivakes LLP
5 2049 Century Park East, Ste. 2460
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8 Attorneys for Plaintiff
9 Michael Zeleny

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL ZELENY,

13 Plaintiff,

14 vs.

15 GAVIN NEWSOM, *et al.*,

16 Defendants.

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF ROBERT
LATHAM BROWN**

Action Filed: December 28, 2017
Trial Date: None set.

1 I, Robert Latham Brown, declare as follows:

2 1. I have been asked to provide my expert opinion and experience regarding the
3 permitting process involved in filming a motion picture or television production that includes the use
4 of firearms in the State of California.

5 2. For my work on this case, I am being compensated at the hourly rate of \$200/hour for
6 the preparation of this report, and \$300/hour for deposition or court testimony. I received no other
7 form of compensation related to this case. No part of my compensation depends upon the outcome of
8 this case.

9 3. **Information Considered:** In preparing this expert report, I have reviewed and
10 considered the following material:

- 11 a. The American Entertainment Armorers Association Amicus Brief in support of
12 Plaintiffs and Petitioners (Proposed); Superior Court Case No. CPF-05-505960,
13 ([https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-
14 Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-
15 Petitioners-Proposed.pdf](https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-Petitioners-Proposed.pdf));
- 16 b. California Penal Code Sections 26350, 26375, and 25510;
- 17 c. FilmLA Permit website (<https://www.filmla.com/for-filmmakers/permits/>);
- 18 d. California Film Commission website (<https://film.ca.gov/>);
- 19 e. The Producers Guild Code of Credits
20 (https://www.producersguild.org/page/code_of_credits); and
- 21 f. The Directors Guild of America Basic Agreement
22 ([https://www.dga.org/Contracts/~/link.aspx?id=CC4363E3-BC29-443C-9E34-
23 88F7A534F982&z=z](https://www.dga.org/Contracts/~/link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z)).

24 **4. Education:**

- 25 a. Bachelor of Arts degree from Tulane University awarded in September 1969.
- 26 b. Two years of study for an MFA degree from The University of California, Los
27 Angeles (1972 – 1974). Left before completion to enter the AMPTP/DGA Training
28 Program.

c. Association of Motion Picture and Television Producers / Directors Guild of America (AMPTP/DGA) Training Program (1974-1976).

5. **Teaching:** I have been an adjunct professor at the USC School of Cinematic Arts since the fall of 1996. The main course I teach is Production Planning, which covers the methods a Producer uses from when he receives a script through to the point of when the film is delivered. This includes, but is not limited to, scheduling the shoot, budgeting the picture, selecting the locations, procuring required permits, hiring the crew, casting the picture, and all logistical arrangements.

6. **Author:** I wrote *Planning the Low-Budget Film* as the textbook for my USC class. The book covers all the basic steps to mounting a film production. It is now used as a text in film schools beyond USC and is currently ranked by Amazon.com at 1,152 in Film & Television.

7. **Film Production Experience:** I have worked as a Producer, Co-Producer, Production Manager, Unit Production Manager, First Assistant Director, and Second Assistant Director on over 40 motion picture and television productions, and generally all but the Assistant Director positions involved obtaining location filming permits. At times I did this on my own and other times were with the aid of a Location Manager. With or without a Location Manager, I was the person ultimately responsible for obtaining the filming permits. This occurred in many different cities and towns in California, numerous other states, and in other countries. The following paragraphs will give a brief description of my involvement with those productions and whether or not firearms were used in them. The dates in parentheses were when the pictures were released.

8. **Position or Credit Definitions:** **The duties of the positions mentioned in the above paragraph are briefly described below. For a more comprehensive list of duties, see the sources listed.**

a. **Producer:** "Subject to the control of the Owner, the individual receiving Produced By credit shall have final responsibility for all business and creative aspects of the production of the motion picture, with direct participation in making decisions concerning a major portion of the producing functions (see Producers Code of Credits Section 1 for comprehensive list)." Source: Producers Guild of America Code of Credits (https://www.producersguild.org/page/coc_tmp_2)

- b. **Co-Producer / Line Producer:** “The Co-Producer / Line Producer is the single individual who has the primary responsibility for the logistics of the production, from pre-production through completion of production; all Department Heads report to the Co-Producer / Line Producer.” Source: Producers Guild of America Code of Credits (https://www.producersguild.org/page/coc_tmp_2)
- c. **Production Manager / Unit Production Manager:** “The UPM, under the supervision of the Employer, is required to coordinate, facilitate and oversee the preparation of the production unit or units (to the extent herein provided) assigned to him or her, all off-set logistics, day-to-day production decisions, locations, budget, schedules and personnel.” Source: The Directors Guild of America Basic Agreement, pp. 14-5, sec. 1-302, (<https://www.dga.org/Contracts/~link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z>)
- d. **Assistant Director:** “The First Assistant Director, alone or in conjunction with the UPM, organizes pre-production, including organizing the crew, securing equipment, breaking down the script, preparing the stripboard and a shooting schedule. During production, he assists the Director with respect to on-set production details, coordinates and supervises crew and cast activities and facilitates an organized flow of production activity.” Source: The Directors Guild of America Basic Agreement, p. 16, sec. 1-303, (<https://www.dga.org/Contracts/~link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z>)

9. **Multiple Television and Feature Film Productions (1976-1979):** Credits – First Assistant Director, Second Assistant Director. After completing the AMPTP/DGA Training Program, I worked on multiple television and feature film productions. My duties on these productions generally did not include obtaining film permits.

10. **The Big Fix (1978):** Credit - Second Assistant Director. When the production department at Universal Studios realized the Unit Production Manager (UPM) was having difficulty keeping up with the pace of the production, they offered me a raise in pay to stick close to the UPM

1 and make sure nothing slipped through the cracks. At the time, Universal did not assign Location
2 Managers to feature productions, so it was left up to me to obtain all the film permits.

3 11. **The Concorde: Airport 79 (1979):** Credit – Unit Production Manager. This was my
4 first job as a UPM. The film was shot in Paris, France; Washington, DC; Alta, UT; and Los Angeles.
5 As the 2nd UPM, I was responsible for the Washington, DC and Alta, UT locations. In Washington,
6 permits were obtained from the National Park Service for the scenes shot at the Lincoln Memorial
7 and the National Mall. In Utah, our filming was confined to the areas above the Alta ski runs,
8 simulating the Alps where the Concorde crash lands in the story.

9 12. **The Nude Bomb (1980):** Credit – Unit Production Manager. This was my first
10 picture as the sole UPM. The film was shot entirely in Los Angeles on local locations and on stages
11 at Universal Studios. It simulated locations in and around Washington, DC. Some weapons were
12 used which mainly involved .38 caliber revolvers.

13 13. **The Blues Brothers (1980):** Credit – Unit Production Manager. This picture was
14 shot mostly in Chicago, IL and surrounding suburbs, with some stage work done at Universal
15 Studios in Los Angeles. Although I did have the assistance of a Location Manager, I handled most of
16 the interaction with Mayor Jane Byrne. There were scenes with a lot of weapons firing, mostly
17 police .38 caliber revolvers. The weapons were all handled by the Prop Master, Michael Milgrom.

18 14. **All Night Long (1981):** Credit – Unit Production Manager. This picture was shot in
19 and around the Los Angeles area including locations in Pasadena and Valencia. No weapons were
20 involved. There was no Location Manager.

21 15. **Bustin' Loose (1981):** Credit – Unit Production Manager. I was brought on to
22 oversee the shooting of additional scenes after Richard Pryor had recovered from an accident in
23 which his face was badly burned. These scenes were shot on stage at Universal and no permits were
24 required.

25 16. **Ghost Story (1981):** Credit – Unit Production Manager. This picture was shot in
26 Saratoga, NY; Woodstock, VT; Philadelphia, PA; and New York, NY. No weapons were involved.

27 17. **The Thing (1981):** Credit – Unit Production Manager. This picture was shot on stage
28 at Universal Studios with locations outside Juneau, AK and Stewart, BC. I acquired all the location

1 permissions required. On an ice field outside of Juneau, we shot a scene involving an actor firing a
2 rifle from a hovering helicopter. We also used pistols and rifles in Stewart, BC and on stage at
3 Universal Studios in California. The Prop Master, John Zemansky, handled them.

4 18. **Star Wars: Episode VI – Return of the Jedi (1983):** Credit – Production Executive.
5 I was unable to accept a UPM credit because Lucasfilm Ltd. was not a signatory to the Directors
6 Guild of America (DGA) Basic Agreement, so I was not able to perform DGA covered work. I
7 supervised two unit managers who were not members of the DGA. Although the majority of the film
8 was largely shot in England and Tunisia, my responsibilities covered the shoots at the Kerner
9 Facility in San Rafael, CA; the Jedediah Smith Redwoods State Park outside Crescent City, CA; and
10 Buttercup Valley, outside Yuma, AZ. Buttercup Valley is actually in California, but Yuma is the
11 nearest town with motels. All weapons were futuristic inventions of the prop department. No actual
12 weapons were used.

13 19. **Iceman (1984):** Credit – Unit Production Manager. This picture was shot in
14 Vancouver, BC and Stewart, BC. I don't recall any weapons being used. If they had been the
15 Canadian UPM, Justis Greene, would have sought the appropriate permits if needed.

16 20. **Indiana Jones and the Temple of Doom ((1984):** Credit – Production Manager. My
17 responsibilities on this picture were the shoots on the Tuolumne River east of Modesto, CA;
18 Mammoth Mountain, CA; and Marin County, CA. No weapons were used.

19 21. **Best Defense (1984):** Credit – Unit Production Manager. This picture was shot in Los
20 Angeles, CA and the area around Jericho, Israel. All weapons use took place in Israel.

21 22. **The Goonies (1985):** Credit – Unit Production Manager. I was brought in to manage
22 additional scenes during postproduction, so I am not listed in the credit crawl. These were shot in
23 Los Angeles, CA, both on stage and on local location. No weapons were used.

24 23. **Warning Sign (1985):** Credit – Associate Producer / Unit Production Manager. The
25 film was shot on location in La Crescenta, CA and Payson, UT. Semi-automatic pistols and a
26 revolver were used. These were handled by the Prop Master, Larry Byrd.

1 24. **Blue City (1986):** Credit – Unit Production Manager. This picture was shot in and
2 around Los Angeles, CA. Revolvers and semi-automatic pistols were used in filming. All the
3 weapons were controlled by the Prop Master, Jack Marino.

4 25. **Howard the Duck (1986):** Credit – Co-Producer / Unit Production Manager. This
5 picture was shot in Northern California consisting of locations in San Francisco, Petaluma, Napa,
6 San Rafael, Black Point, Modesto, Nicasio, Oakland, Herald, Rio Vista, and Sacramento. No
7 firearms were used.

8 26. **One Crazy Summer (1986):** Credit – Unit Production Manager. This picture was
9 shot in Cape Cod and Nantucket, MA. There were rifles present in a scene, but they were never
10 fired. The Prop Master, Art Lipschultz handled the weapons.

11 27. **Spaceballs (1987):** Credit – Production Manager. This picture did shoot on location
12 in Buttercup Valley, CA but was mostly shot on stage at what is now Sony Studios in Culver City,
13 CA. At that time, it was still MGM Studios. I was assisted by a Location Manager, Michael Meehan.
14 All weapons were products of the prop department.

15 28. **Clean and Sober (1988):** Credit – Unit Production Manager. This picture was shot in
16 Pennsylvania, Delaware, and New Jersey, with stage work being done at Burbank, CA. No weapons
17 were used.

18 29. **Elvira: Mistress of the Dark (1988):** Credit – Production Manager. I was brought in
19 to do additional scenes in post-production. Most of our filming took place on stage at the Burbank
20 Studios except for a 2nd unit in Las Vegas, NV which I directed. No firearms were used.

21 30. **Child's Play (1988):** Credit – Unit Production Manager. The portion of picture I was
22 involved with was filmed in and around Los Angeles. I replaced the original UPM who had left the
23 film. Handguns were used in some scenes. These were under the supervision of the Prop Master, Art
24 Shippee. I was assisted in obtaining film permits by a Location Manager, Michael Malone.

25 31. **The War of the Roses (1989):** Credit – Unit Production Manager. This picture was
26 mostly shot on stage and local locations in Los Angeles, with a few scenes being shot at Whidbey
27 Island, WA. No firearms were used.

32. **Child's Play 2 (1990):** Credit – Executive Producer. This picture was shot mostly in Pasadena, Long Beach, and Los Angeles, CA. There were police officers portrayed who were wearing holstered side arms. These were probably rubber props.

33. **Child's Play 3 (1991):** Credit – Producer / 2nd Unit Director. This picture was shot mostly in Southern California with the military academy exteriors shot at Kemper Military School in Boonville, MO. Handguns and M1 rifles were used in both California and Missouri. The weapons were all under the custody and supervision of the Prop Master, Jack Marino. Location filming permits were obtained by a Location Manager, William Bowling. No special permits were required for the use of the weapons.

34. **Babylon 5: The Gathering (1993):** Credit – Producer / Unit Production Manager. This was the pilot episode for a television episodic series. It was shot on stage in Santa Clarita, CA at the Santa Clarita Studios. No actual firearms were used.

35. **Robin Hood: Men in Tights (1993):** Credit – Executive in Charge of Production / Production Manager. This picture was shot in and around Los Angeles, CA. All weapons were medieval. No firearms were involved. William Bowling was the Location Manager.

36. **Showgirls (1995):** Credit – Unit Production Manager. This picture was shot in Los Angeles, CA; Lake Tahoe, NV; and Las Vegas, NV. No firearms were used.

37. **Dracula: Dead and Loving It (1995):** Credit – Associate Producer / Production Manager. This picture was shot in and around Los Angeles, CA. No firearms were used.

38. **Starship Troopers (1997):** Credit – Production Manager. This picture was shot in Southern California; Hell's Half Acre outside of Casper, WY; and Kadoka, SD. William Bowling was the Location Manager. During the shoot in Hell's Half Acre, we used futuristic prop weapons built on real automatic rifles, plus real Browning .50 caliber machine guns, all of which were fired using blank cartridges. Since the Federal Firearms Act of 1938, automatic weapons have been strictly controlled. These prohibitions were renewed in the Gun Control Act of 1968. I hired Robert "Rock" Galotti as our Weapons Coordinator/Armorer. Mr. Galotti is a Federal Firearms Licensee (FFL) and he was legally authorized to be in possession of such weapons and to arrange their transportation. He maintained strict control over the weapons. At the end of each shooting day, Mr.

1 Galotti caused the weapons to be secured at the Casper, WY Police Department. No permits were
2 required for our use of these weapons because Mr. Galotti had control of them.

3 39. **The Parent Trap (1998):** Credit – Production Manager. My involvement with this
4 picture was for the shooting sequences in the western United States. This included locations in
5 California such as San Francisco, Camp Seely in Crestline, Lake Gregory, Long Beach Airport,
6 Napa Valley, RMS Queen Mary Long Beach, Santa Clarita, and Los Angeles. No weapons were
7 used.

8 40. **Hollow Man (2000):** Credit – Production Manager. This picture was shot in
9 Washington, DC and Los Angeles, CA. There were handguns used but I believe they were non-
10 functional replicas.

11 41. **Ali (2001):** Credit – Production Manager. I am not listed in the credit crawl since I
12 was only involved in prepping the picture to shoot after which I handed the picture over to another
13 UPM. My work included scheduling the shoot, budgeting the picture, hiring the crew, arranging to
14 transport the crew and equipment to Uganda, and tracking costs during the prep period.

15 42. **Spider-Man (2002):** Credit – Production Manager. I am not listed in the credit crawl
16 since I was brought in to oversee the shooting of additional scenes and to manage the postproduction
17 period. No firearms were used for these additional scenes.

18 43. **The Anarchist Cookbook (2002):** Credit – Producer. This was a low budget
19 production shot in and around Plano, TX with a day at the Fort Worth Stockyards. There was a
20 handgun used which was obtained by the Prop Master, Jason Hammond.

21 44. **Vampires: Los Muertos (2002):** Credit – Line Producer / Unit Production Manager.
22 I am not listed in the credit crawl since I was brought in to manage a few added scenes. The picture
23 was filmed entirely in Mexico except for the added scenes which I supervised. These were shot in
24 Los Angeles. There were handguns and a shotgun used. These were obtained by the Prop Master,
25 Richard Blake Wester. No special permits were required.

26 45. **The Santa Clause 2 (2002):** Credit – Production Manager. This picture was shot
27 entirely in Canada. I was on the film only for the prep period during which I scheduled and budgeted
28 the movie.

1 46. **Charlie's Angels: Full Throttle (2003):** Credit – Unit Production Manager. I was
2 brought in to manage the additional scenes, so I am not listed in the credit crawl. No firearms were
3 used.

4 47. **S.W.A.T. (2003):** Credit – Unit Production Manager. This picture was shot in and
5 around Los Angeles and at Mojave Airport. Many firearms were used including automatic weapons.
6 There were large shoot-outs staged in Burbank and downtown Los Angeles. All weapons were under
7 the control of our Armorer, Michael Papac who is an FFL. Our main concern was how the noise
8 would affect residents and businesses in the surrounding areas.

9 48. **A Lot Like Love (2005):** Credit – Unit Production Manager. This picture was shot in
10 and around Los Angeles and in New York, NY. No firearms were used.

11 49. **Lords of Dogtown (2005):** Credit – Unit Production Manager. I was brought in to
12 manage the additional scenes, so I am not listed in the credit crawl. It was shot mostly in Venice, CA
13 and other Los Angeles areas. No firearms were used.

14 50. **Local Color (2006):** Credit – Co-Producer / Unit Production Manager. This was a
15 low budget picture shot in New Orleans and Covington, LA. No firearms were used.

16 51. **The Holiday (2006):** Credit – Unit Production Manager. I was brought in to
17 supervise additional scenes, so I am not listed in the credit crawl. These were shot in and around Los
18 Angeles.

19 52. **Hard Breakers (2010):** Credit – Producer / Production Manager. This was a low
20 budget independent feature shot in and around Los Angeles. No firearms were used.

21 53. **1982 (2013):** Credit – Co-Producer. This was a low budget short film. It was shot in
22 Los Angeles. No firearms were used.

23 54. **Love is Not Love (2019):** Credit – Line Producer. This was a low budget
24 independent feature shot in and around Los Angeles. No firearms were used.

25 55. **Current Productions:** Credit – Producer. I am currently involved in the development
26 of four films, two of which will involve firearms.

1 56. **Planning for the use of firearms in a scene:** When I am employed as a Co-
2 Producer, Line Producer, or Unit Production Manager, there are discrete steps that I follow when
3 planning a film shoot in which firearms are used. These are outlined in the following paragraphs.

4 57. **Read the script.** The first step is to read the script and note any scenes in which
5 firearms are used.

6 58. **Create the breakdown sheets.** A breakdown sheet is created for each scene in the
7 script. In the top half of this sheet are listed the scene numbers, whether the scene is exterior,
8 interior, or both, the set name, the time of day, how long the scene is in terms of pages and eighths of
9 a page, a brief but unique synopsis of the scene, the page of the script the scene starts on, the story
10 day of the scene, what filming unit will be shooting the scene, and the locations of the shoot.

11 a. **Filling in the breakdown sheet:** The bottom half of the breakdown sheet is where all
12 the specific elements that are needed to shoot the scene are listed. These would
13 include cast members; background actors (extras); stunt players; picture cars or other
14 vehicles appearing in front of camera; props; camera equipment; special effects that
15 occur in the scene such as fire, rain, or explosions; costume notes; makeup and hair
16 notes; animals; animal wranglers; music notes; sound notes; art department notes; set
17 dressing; greenery; special equipment; security; additional labor; visual effects notes
18 and personnel; and miscellaneous notes.

19 b. **Props.** Props are any objects which are handled by the actors or extras. Jewelry,
20 eyeglasses, and watches are also included in props, as are weapons of various sorts.
21 These can be replicas of weapons, for example they may be an airsoft or plastic gun,
22 or they can be real weapons such as knives, swords, or firearms.

23 c. **Firearms.** Motion pictures and television productions usually use Title 1 firearms.
24 These are firearms that are available to the general public, such as rifles from bolt
25 action to semi-automatic, revolvers, and semi-automatic handguns. On occasion, we
26 also use firearms that are prohibited to the general public in so far as they require a
27 special federal permit and license to possess them. For more complex or higher
28

1 volume of firearms or other weapons, we employ an Armorer who has a federal
2 firearms license.

3 d. **Title 1 Firearms.** In California, absent a statutory exemption, if a Prop Master or
4 Armorer wanted to rent a Title 1 firearm to use in a motion picture or television
5 production, the Prop Master or Armorer would need to undergo a background check
6 every time he or she rented a firearm. Then when the Prop Master or Armorer wanted
7 to turn the firearm over to an actor to use in a scene, the actor would have to go
8 through a background check as well. Legislated waiting periods would also apply in
9 each of these transfers. This would be unworkable in the making of a motion picture
10 or television production and would severely impact the filmmakers.

11 e. **The California Entertainment Firearms Permit.** The California Legislature passed
12 amendments to California's firearms restrictions creating the Entertainment Firearms
13 Permit ("EFP"). This is a California specific permit that a Prop Master or any other
14 nonprohibited person can register for and can be used in place of the repeated
15 background checks. It also allows an EFP holder to give the firearm to an actor or
16 other Authorized Participant and take it back after the scene is over, without doing
17 background checks or requiring a waiting period. For purposes of California's ban on
18 the open carry of weapons, the actor or participant to whom the firearm is loaned is
19 an "Authorized Participant" as that term is used in California Penal Code Sections
20 26375 and 25510.

21 f. **Federal Firearm License.** In order to possess, transport, rent, or transfer firearms
22 that are prohibited by the Federal Firearms Act and succeeding laws, a Prop Master or
23 Armorer must have a Federal Firearms License ("FFL").

24 59. **Create the shooting schedule.** Once the breakdown sheets are completed, the
25 database of breakdown sheets is viewed in the form of a strip board, where each scene is individually
26 displayed on a strip. These strips can be rearranged and sorted on the board with day markers to
27 create a shooting schedule. It's at this point that I would consult with a Prop Master or Armorer if
28 the motion picture or television production requires operational firearms.

1 60. **Prop Master or Armorer.** The decision whether to hire a Prop Master or an Armorer
2 rests on the type and the number of weapons needed. On a movie such as STARSHIP TROOPERS, I
3 had a complete department headed by an Armorer to handle all weapons. In that film, we were using
4 many prohibited weapons including two Browning .50 caliber machine guns. Once the Prop Master
5 or Armorer is hired, I would discuss with him or her the weapons we needed and solicit his/her
6 recommendations. At that time, we would not know the names of all the people who might be
7 handling the firearms in any given scene. This is because we would not necessarily have the motion
8 picture or television production completely cast and would not yet have hired the stunt players. Any
9 extras who would be given firearms in the scenes might not be hired until the day of shooting. In
10 addition, on any shooting day, the Director may change his or her mind as to who will be firing the
11 weapons. In my experience, neither a Prop Master nor an Armorer are concerned with or request the
12 names or identities of the specific actors and extras who will be Authorized Participants. With
13 respect to the Authorized Participants, the only concern a Prop Master or Armorer has is to make
14 sure that the Authorized Participants are not legally prohibited from possessing a firearm and are
15 capable of safely handling the firearm. The Prop Master or Armorer will then arrange for the
16 procurement of the prop weapons and are responsible for the transport, storage, and safe use of the
17 firearms.

18 61. **Film permits.** One to two weeks prior to the filming of a scene, the production
19 company's designee will apply for the location filming permits. The application asks for information
20 related to the logistics of the shoot, including for example; what will take place in the scene, how
21 long we expect to be at the location, whether we will be firing weapons, the approximate size of the
22 crew, whether we will be using pyrotechnics, where we will be parking our equipment, and whether
23 we will need traffic control on public streets. It's not that different from applying for a permit to
24 perform street maintenance. At no time during the permitting process, have I ever been asked to
25 provide the names or identities of the actors, stunt players, and extras who will be using the firearms
26 in any specific scene, and I have never volunteered that information. In fact, often at this stage of the
27 process, that information is not yet known or finalized.

62. The film permit will be issued with certain restrictions such as how many policemen we must hire and whether we need a fire safety officer with us during the shoot. We will also be required to notify residents and businesses within a 500-foot radius of our location about the upcoming shoot. If it's a residential area, we will be restricted to certain hours of the day (e.g. we can't arrive before 7:00 am and must be gone by 10:00 pm). The film permit does not identify or reference the names or the identities of the Authorized Participants in the shoot. Obviously, any notification to residents or businesses likewise does not include the names or identities of the Authorized Participants.

63. **On the day of filming.** The call sheet for that day will have a notice that there will be gunfire on the set. We do the same if there will be explosions or if there will be anything similar the crew should be aware of. During the set up of the shot, a mandatory safety meeting will be held by the First Assistant Director in conjunction with the Prop Master and/or Armorer attended by the Director, actors, stunt players, extras, and crew. Hearing protection is issued to the crew. Cast members, stunt players, and extras will be issued foam ear plugs that won't be visible to the camera.

64. Before each take, the weapons are checked, loaded with blank cartridges, and handed to the Authorized Participants (the actors, stunt players, and extras) by the Prop Master/Armorer. After each take, the weapons are secured by the Prop Master/Armorer, cleared, and reloaded with blank cartridges if there is to be another take.

65. The use of firearms in motion pictures and television productions is highly regulated, especially in California. It would be more so if not for the special exemptions from the state firearm laws that are granted to the motion picture and television industry. Without those exemptions, it would be impossible to make certain types of productions in California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed October 9, 2020 at Westlake Village, California


Robert Latham Brown
Declarant

Exhibit 12

1 David W. Affeld, State Bar No. 123922
Brian R. England, State Bar No. 211355
2 Damion Robinson, State Bar No. 262573
Affeld Grivakes LLP
3 2049 Century Park East, Ste. 2460
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4 Telephone: (310) 979-8700

5 Attorneys for Plaintiff
6 Michael Zeleny

7
8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELANY,
12 Plaintiff,
13 vs.
14 GAVIN NEWSOM, *et al.*,
15 Defendants.

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF
MICHAEL TRISTANO**

Action Filed: December 28, 2017
Trial Date: None Set

1 I, Michael Tristano, declare as follows:

2 1. I have been retained by Affeld Grivakes LLP on behalf of Michael Zeleny, as an
3 expert in the above-referenced litigation.

4 2. As an independent expert, I have been asked to give my opinion on the issue of
5 permitting for film, television, and other video projects, and, specifically, the permitting and use of
6 firearms on such projects.

7 3. For my work on this case, I am being compensated at a rate of \$500 per hour, plus
8 expenses. I have not received and will not receive any other compensation related to this case. No
9 part of my compensation depends on the outcome of this case.

10
11 **PROFESSIONAL BACKGROUND AND EXPERIENCE**

12 4. I have been a professional Armorer and Special Effects Technician for more than 30
13 years. I have worked on more than 500 feature films, television shows and video projects, most of
14 which are listed on the Internet Movie Database (imdb.com). These projects include: 3:10 to
15 Yuma, The Purge, Medal of Honor, I Am Still Here, and Enron: The Smartest Guys in the Room.

16 5. Most of my work is done in the State of California, and my licenses and permits to
17 do this work include:

- 18 1) A California DOJ Entertainment Firearms Permit;
- 19 2) A Federal Firearms License (FFL);
- 20 3) The four California Dangerous Weapon Permits, which include permits for
21 assault weapons and .50 caliber weapons, machine guns, short-barrel rifles
22 and shotguns, and destructive devices; and
- 23 4) The California Certificate of Eligibility.

24 6. Besides providing on-set armorer services and training of actors, actresses, extras,
25 and stunt people (collectively "Authorized Persons") for proper and safe use of blank-firing
26 firearms on set, my company also rents and provides non-firing replica and rubber guns.

27 7. I have also been an on-camera weapons expert on shows for The History Channel,
28 The Discovery Channel and A&E.

1 8. When I am involved in any project using firearms on the set of a motion picture, TV
2 show or video project, I advise the production on what firearms I think they should use in their show
3 and what permitting we will require regarding the use of firearms during the project.

4 9. Based on my extensive career as a professional, licensed motion picture and
5 television Armorer, I believe that I am qualified to address the questions presented to me.

6
7 **INFORMATION CONSIDERED**

8 10. In preparing this expert report, I have reviewed the relevant applications and
9 standards regarding permitting for film, television and video projects in the State of California, and
10 the use of firearms on set.

11 11. My analysis of the information relevant to this case is ongoing, and I expect to
12 continue receiving information and questions as they are presented to me, and it is possible that new
13 information may affect certain conclusions in this report. I therefore reserve the right to supplement
14 it.

15
16 **OPINIONS**

17 12. If called upon to testify, I would explain the following facts and opinions regarding
18 permitting for film, television and video productions, and the inclusion of proper permitting for the
19 use of firearms on these productions.

20 13. When I am contacted by a production to provide their show with Armorer services
21 and the rental of blank-firing guns, non-firing replicas and rubber guns, I am involved with the
22 production company in the process of obtaining the necessary permits. I always insist that
23 productions get the proper permitting and cover all of the requirements in the specific area and
24 jurisdiction they are filming in.

25 14. In the State of California, although rules and regulations may vary somewhat from
26 county to county and city to city, the general state policies are the same:

- 27 1) The production must apply for a permit for all of the days and at each
28 location where the filming will be taking place through the offices in

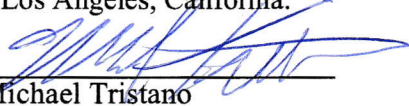
1 charge of filming in the respective jurisdictions. In Los Angeles, for
2 example, permits are applied for and obtained from FilmLA.

- 3 2) If there is going to be blank-firing weapons used and blanks fired, both the
4 permit application and the permit must include this information, with a
5 description of the type of gunfire (such as single shot, semiautomatic, fully
6 automatic, or black powder blanks) and the load size of the blanks (1/4
7 load, 1/2 load, or full load) so the proper notifications can be made to the
8 surrounding area.
- 9 3) Is the blank gunfire to take place in the interior or exterior of the location?
10 If there is gunfire in the exterior of the location, or in any area open to the
11 public view, at least one Police Officer is usually required to be assigned to
12 the location by the permitting office. A Fire Marshall or FSO (Fire Safety
13 Officer) may also be assigned by the permitting office if the location is
14 located in a fire zone, or if there are possible flammable elements at the
15 location.
- 16 4) If there is no blank gunfire, but replica or rubber guns are brandished in an
17 exterior part of the location, or an area open to view by the public, this
18 must also be on the permit application and the permit and a Police Officer
19 will still be assigned to the location to deal with civilians to make sure
20 everyone knows this is not an active shooter situation.
- 21 5) Whenever any real or blank-firing firearms are present on a set, a licensed
22 Armorer must be present to handle blank-firing weapons and a licensed
23 Prop Master for non-firing replica guns and rubbers. This is so proper
24 safety protocols are always followed.
- 25 6) Permitting offices do not inquire about the names or identities of the
26 Authorized Participants using the weapons, as such information is neither
27 necessary nor relevant for the permitting process. In fact, when the permit
28 applications are being prepared, submitted, and considered, often times the

1 specific names and identities of the Authorized Participants are not known
2 or finalized. In particular, the names and identities of extras serving as
3 Authorized Participants may well not be known until the actual day of the
4 shoot and can change throughout the day in the director's discretion. In my
5 experience, during the permitting process, I have never been asked to
6 provide, and have not provided, the names and identities of the anticipated
7 Authorized Participants to any permitting office or agency.

- 8 7) In contrast to the permitting offices and agencies, licensed Armorerers are
9 required to ensure that none of the Authorized Participants using the real
10 and/or blank-firing weapons is a felon or a person prohibited from possessing
11 a firearm. Such "prohibited persons" may use replica or rubber weapons only.
12 8) While any blank-firing, replica or rubber weapons are on set, they remain in
13 the charge of the Armorer and/or Prop Master, until they are needed to be
14 placed in the hands of the Authorized Participants and/or on the set. After the
15 shots are completed, the firearms are taken back and remain in the charge of
16 the Armorer and/or Prop Master.
17

18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct. Executed October 9, 2020 at Los Angeles, California.

20 
21 Michael Tristano
22 Declarant
23
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